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OKLAHOMA MUNICIPALITIES

PROCEEDINGS OF THE
TENTH ANNUAL CONVENTION
OF THE
OKLAHOMA MUNICIPAL LEAGUE

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Issued Semi-Monthly By
THE UNIVERSITY OF OKLAHOMA
Norman, Oklahoma
New Series No. 280 Extension No. 79.
February 15, 1924

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THE OKLAHOMA MUNICIPAL LEAGUE
"Better Cities—Better Governed"
A State-Wide Non-Partisan Organization Working in the Interests of Better Cities and Better Government for Them.

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February 15, 1924.

F. F. Blachly, Editor, Norman, Oklahoma

INTRODUCTION

The tenth annual convention of the Oklahoma Municipal League was held at Oklahoma City on December 14 and 15, 1923. This bulletin contains the papers read at the convention. As some speakers talked from notes, which they did not have time to develop into articles suitable for publication, and as it was unfortunately impossible to make a complete transcript of the very interesting discussions, the proceedings of the convention are by no means presented here in full. It was the unanimous desire of the convention, however, that such papers as could be collected by the secretary should be published, in order that the valuable information contained in them might be made available for ready reference. Through the co-operation of the University of Oklahoma, this has been done. Neither the University nor the Municipal League takes any responsibility for the contents of the papers, which represent individual opinions.

F. F. BLACHLY,
Editor.

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PROGRAM OF TENTH ANNUAL CONVENTION
THE ASSESSMENT OF ABUTTING PROPERTY FOR CONSTRUCTION OF SIDEWALKS

Robert R. Pruett, City Attorney, Waurika

It shall be my purpose to discuss briefly the history of sidewalk legislation in Oklahoma, to point out the holdings of our courts in the matter of procedure, and to inquire more thoroughly into the validity of assessment of abutting property for the construction of sidewalks.

So far as I have been able to learn, the first statute in Oklahoma on the subject of sidewalk construction was a part of section 2, p. 85, laws 1895. This was amended by S. L. 1897, p. 80, effective March 11, 1897. That part of the act relating to paving was amended by the S. L. 1907-1908, known as the 1908 paving law. Reference to paving and also the clause limiting payment of labor to one dollar and fifty cents a day were eleminated by the revision of our code in 1910, and the section became R. L. 1910, section 646; now Compiled Laws 1921, section 4625. This section provided that no notice should be necessary, but that upon petition of ten or more citizens the council might order a sidewalk constructed if they deemed such construction necessary; and that the street commissioner or the committee on improvements should supervise the work, and that no greater charge should be made against the property than the actual cost of construction and twenty-five percent added thereto. It further provided that the assessments shall be collected in the same manner as other assessments for street improvements, and that "each lot or piece of ground abutting on such sidewalk shall be liable for the cost of repairs made along or in front of such lot or piece of ground." This statute recognized the right to assess abutting property.

Section 4548, Comp. Laws, 1921, contains a general clause authorizing the city council to construct sidewalks, and makes an express grant of taxing power to the municipality for enforcing such authority.

From the foregoing it was doubtful what procedure was necessary in the construction of sidewalks. The statute above referred to provided that no notice should be required for the construction of sidewalks, and that five days' notice was necessary before repairs could be made and the property charged with the cost thereof. Again, the last sentence of said section provided that "the cost herein provided for shall be collected

in the same manner as other assessments for street improvements." Did this mean that in constructing a sidewalk identically the same procedure should be followed as was prescribed for paving, that appraisers should be appointed, that bonds should be issued, payable in ten annual installments, and that the walk along the side of the block should be apportioned as a quarter block charge? These and many other questions were involved. It was apparent that either the procedure was very difficult and costly where an inexpensive sidewalk was to be constructed, or that the legislature has left the governing body with no definite procedure to follow. It is well that we are not called upon to decide these difficulties.

In 1915, S. L. p. 449, the Oklahoma legislature, to remedy the difficulties above referred to and others not so apparent, passed with executive approval what is now known as the sidewalk law, Chapter 29, Article XIII, Compiled Laws, 1921.

Section 4628 gives authority to all cities and towns to construct sidewalks.

Section 4629 provides that when the governing body of any city or town shall deem it necessary to construct sidewalks, it shall by resolution declare such necessity, such resolution to state in general terms the general specifications and locations of such walks.

Section 4630 provides for the officer, designated by the council, to serve persons with notice to construct walk within thirty days from the date of said notice; upon their failure to construct such walk the city shall have such walk constructed and make the charge a special lien against the property. Non-residents of such municipalities shall be served by publication.

Section 4631 provides that after the expiration of thirty days' notice, if the improvements have not been made, the city council shall direct the engineer to prepare and present to such body a detailed statement of the cost of construction of the improvements contemplated, which have not been installed by the owner of the property; and after the approval of the estimates such governing body shall advertise for bids for such improvements, said advertisements to be in two consecutive issues of a weekly paper, and shall let the contract to the lowest and best bidder, provided such bid does not exceed the engineer's estimate.

Section 4632 provides that as soon as the contract is let, and the cost can be accurately determined, the engineer shall compute the cost thereof, and said city shall assess "the cost and expense of such improvement made in front of or along-

side of such lot *** to such lot in front of or alongside of which such improvements were made, and in making such levy and assessment intersection of streets shall be considered as abutting the corner lot adjacent thereof. Such levy shall be by resolution."

No reference is made in Chapter 29, Article XIII, to the chapter on street improvement; and no provision is made for assessment of fractional lots, or for assessment of the cost of walk along side of property to the quarter block; but it is specifically provided that the cost thereof shall be assessed against the lot along side of which or in front of which the walk is constructed. The legislature had determined that the assessment shall be levied against the abutting property, which it had power to do.

To summarize, the statute above quoted provides for:

1. Resolution of necessity.
2. Notice to owners to construct.
3. Engineer's estimate at the expiration of 30 days.
4. Approval of estimates by council.
5. Notice of bids.
6. Letting of contract.
7. Final report of engineer showing the cost of construction.
8. Resolution levying assessment.
9. Issuance of tax warrants payable in three annual installments.

The Fifth Legislature of the State of Oklahoma provided specifically and in detail not only how the council should proceed but just how much should be assessed against each lot.

"Where there are two provisions of the statute, one of which is special and particular and clearly includes the matter in controversy, and where the special statute covering the subject prescribes different rules and procedure from the general statute, it will be held that the special statute applies to the subject matter, and that the general statutes do not apply."

Gardner v. Dist. No. 87 Kay County, 34 Okla. 716, 126 Pac. 1018.

"Where two statutes cover the same subject and the statute last adopted is repugnant to the provisions covering the same subject in the first statute, the latest expression of the legislature will govern."

City of Pawhuska v. Pawhuska Oil & Gas Co., 64 Okla 214, 166 Pac 1058.

If the provisions of the chapter on street improvements, generally known as the paving law, could be held to have prescribed the procedure for sidewalk construction, the subsequent legislation of 1915, prescribing a particular and special procedure, inconsistent with the provisions of the chapter on street improvements, repealed such chapter so far as it related to sidewalks.

Furthermore, Chapter 173 of the Session Laws 1923, revised the paving law and provided that all of Article 12 of Chapter 29, Compiled Laws 1921, and all laws and parts of laws in conflict therewith, except a portion of section 4623, relating to penalties, was thereby repealed. The said Article 12, Chapter 29, Compiled Laws 1921, contained the first provisions relative to sidewalk construction, which were embodied in section 4625. Likewise Chapter 29, Article XIII, granting power to the municipalities to construct sidewalks, repealed that portion of section 4548, Compiled Laws 1921, granting powers to the city to construct sidewalks and make assessments on all lots abutting on said improvements in the manner provided in the article on street improvements.

The question then arises as to the validity of Article XIII, Chapter 29, Compiled Laws 1921; Session Laws 1915, Chapter 219.

Do the constitutional provisions of the State and Federal Constitutions prohibit the assessment of the abutting property with the entire cost of the sidewalk as violative of the due process clause and the clause relating to taking of property without just compensation? Does the fact that an assessment is large compared with the value of the property, or that an assessment may be made on a fractional or irregular lot, invalidate the assessment, and make the statute repugnant to the constitution?

The right of the governing body of the municipality to construct sidewalks and assess the cost of the same to the abutting property is almost universally recognized.

Parsons v. Sweet, 13 N. J. L. 196
State v. Newark, 37 N. J. L. 196
Sands v. Richmond, 31 Gratt 571, 31 Atl 742
Palmer v. Way, 6 Colo 106
Brodages v. Higgins, 1 Tex C. A. 56
Greensburgh v. Young, 53 Pa 280
Bendall v. Lebanon 19 Ohio 418
White v. People, 94 Ill. 604

Frankling v. Maberry, 6 Hump 338

In many of the cases the decision is placed on the basis of the police power, but in others it is said that the legislature has itself determined the benefits and the property benefitted, and that such determination is a legislative and not a judicial act. Our legislature has determined that the property benefited is the abutting property, and the amount of the benefit the cost of construction of the improvement.

That the expense of construction or maintenance of a sidewalk may be charged to the premises in front of which it is constructed, has been decided in many cases, some of which do not declare the reason for their decision, but many put it on the ground that the improvement may be ordered as a police regulation.

Macon v. Patty 57 Miss 378
Lowell v. Hadley 8 Met 180
Buffalo Cement Co v. Buffalo, 46 N. Y. 503
Palmer v. Way, 6 Colo 106
14 L. R. A. 758-9

Our supreme court held in M. K. & T. Ry. Co. v. City of Tulsa, Okla. 145 Pac. 398,

> "Whether lots abutting on street improvements are in fact benefitted by the street improvement is a legislative question, and having been settled by the legislature power is conclusive."

Again in Crawford v. Cassity, 78 Okla. 261, 190 Pac. 412, the court said,

> "Whether lots in a sewer district are benefitted to the amount of the assessment levied against such lots is a legislative question, and having been determined by the legislative power of the city in regular proceedings, is conclusive in an action to enjoin the collection of the assessments on the ground that the cost exceeds the benefits."

In the case of Leatherman v. Town of Addington, 37 Okla. 436, 132 Pac 129, the court held:

> "It seems clear, in view of all these statutes, that incorporate towns and villages have the right to levy assessments upon abutting property for the purpose of building sidewalks."

In the case of Shultise v. Town of Taloga, Oklahoma, —— Okla. 140 Pac. 1190, it was urged that the statute then in force was invalid for the reason that it deprived persons of property without due process of law, and that the statute in effect took

private property for public use without just compensation. The plaintiff in that action contended that the assessment took no consideration of the benefits and did not provide a hearing wherein the property owners could be heard on the matter of benefits. The same contention was also made in Block v. Patrick, 35 Okla 408, 130 Pac 1190.

In those cases it was held that the statute authorized the trustees of an incorporated town to construct sidewalks upon the failure of the property owner to do so, and to assess the cost of such improvement to the abutting property upon the frontage basis, and to issue a tax warrant and make such tax warrant a lien against the property therein described; and that such statute was valid.

On this point both of the above cases cited and relied upon French v. Barber Asphalt & Paving Co. 181 U. S. 325, 45 Law Ed 879. In that case the tax, a paving assessment, was levied against the abutting property upon a front foot basis. What property was benefitted, and the proportion of the cost which such property should pay, was determined by the provisions of the charter, to be the property abutting upon the portion of the street paved, and that the cost should be apportioned in the same ratio as the frontage of any piece of property was to the total frontage upon the improvement. The court held that a tax levied under this procedure did not take property without due process of law. In that case it is said "that the rule of apportionment among the parcels of land benefitted also rests within the discretion of the legislature, and may be directed to be in proportion to the position, the frontage, the area or the market value of the lands, or in proportion to the benefits as estimated by commissioners."

In Block v. Patrick, supra, Mr. Justice Hays says: "the legislature has, by the statute herein involved, itself determined and designated what property will be benefitted by the construction of the sidewalk. *** It is the property abutting on such improvements."

"Recurring to the further objection that under Section 24 Art 2 of the Constitution, providing that private property shall not be taken or damaged for public use without just compensation, it is now generally held by the courts of last resort that similar provisions of the state constitutions have to do with restrictions upon the power of eminent domain, and require compensation to be made for property taken in the exercise of that power, but that such organic provisions have nothing to

do with the power of taxation, and therefore have no application to assessments, which are a branch of the taxing power." Shultise v. Town of Taloga, supra.

In Block v. Patrick, supra, it was urged that such special assessments were violate of section 6 of the organic act of the territory, providing that property should be taxed according to its fair cash value, in that the assessment of abutting property for improvements was upon another basis than the value of the property; and the court held that such provision was inapplicable to assessments made against lots for the purpose of covering the cost of local improvements.

The latest case covering sidewalk construction, and a case construing and applying Article 13 Chapter 29, Compiled Laws, 1921, is Kingfisher Improvement Co. v. City of Waurika, Okla., et al, 14,363, rehearing denied December 11, 1923.

In passing on the purpose of notice the court held: "The only purpose of notice is that owner may know the action of the city authorities as to the necessity of such sidewalk, and avail himself of the right to build it and thus obviate the necessity of the city letting the contract; the service so made was by an officer designated by the council and this meets the requirements of the statute. (See 4639 Compiled Laws 1921.)" The council designated the city engineer to serve the notices.

The court again says, "plaintiff finally complains that the assessment for the sidewalk is made against the adjoining property, without regard to benefits. This was a matter for the legislature, and it assumed the burden in unambiguous language brought down in Comp. Laws 1921, Art 13 Chapter 29, and we concur with the trial court that the provisions thereof have been sufficiently complied with in the instant case."

THE OILING OF EARTH ROADS AND STREETS

Fred Padgett, University of Oklahoma

The state of Oklahoma produces large quantities of petroleum, but, in the past, very little of this bitumen, in the form of road oil, has been utilized for the improvement of unpaved streets and highways within the confines of the state. In other states, particularly Illinois, the practice of oiling earth roads and streets has reached considerable proportions and is regarded with favor.

Before attempting a discussion of the oiling of earth roads and strets it is necessary to define the limitations and advantages of the method. The practice should not be regarded as a true method of hard surfacing, but rather a means of assisting in the maintenance of earth and gravel roads. In connection with unpaved streets and highways, which are heavily travelled, the method is to be considered only as a temporary expedient, designed to serve until conditions are such that hard surfaced roads are possible. As a permanent method of treatment, oiling is permissible, and is in fact well adapted to assist in the maintenance of those earth and gravel roads which are tributary to main systems of hard surfaced highways, side streets in the municipalities, and main roads in sections where hard surfaced roads are not possible because of the cost involved. Oiling is also admirably adapted to unpaved driveways in parks and private grounds where excessively heavy traffic does not obtain. In any case oiling should not be attempted unless proper drainage of the road can be secured.

The oiling of earth and gravel roads and streets, under the limitations just stated, is fully justified in view of the results, which are more than commensurate with the low cost. In the following paragraphs the methods of oiling, the precautions to be observed, and the selection of oils, are topics which are briefly discussed.

When a suitable grade of oil is applied to the surface of earth roads, the effect is to produce an oil soaked crust which hardens in time due to the combined weathering of the oil and the compressing effect of traffic. As a result, dust is eliminated and the oiled surface, being substantially impervious to water, is not readily transformed into mud during wet weather. In addition, the road requires less grading and dragging than otherwise, and lends itself better to maintenance during periods of

extended dry weather. The oiled roads at Norman, during the dry weather of last summer, and the wet season this fall, could be travelled without inconvenience at all times and there was little evidence of either dust or mud.

After effective drainage is secured, earth roadways should be prepared for oiling by shaping and compressing with a heavy roller. If the material of the roadway consists mainly of clay, the soil then is loosened slightly on the surface and the oil is applied at the rate one-fourth to one-half of a gallon per square yard. If the material of the roadway is loose soil, such as sand, the method used is radically different. After preparing the road by shaping and rolling, the soil is losened to a considerable depth, and heavy oil is applied at the rate of three-fourths to one gallon per square yard and is well incorporated with the subsoil. The road is shaped and rolled again, and a final application of light oil is made on the surface at the rate of one-fourth gallon per square yard. Gravel roads, however, which have a firm base, can be satisfactorily treated by surface application of light oil. In any case, it is best not to permit traffic on the road until the oil has penetrated, and to sprinkle coarse gravel, sand, or soil from the roadside on the oiled surface to prevent "picking up" by vehicles.

Oil should be applied to roads only in warm weather. Sometimes it is necessary to heat the heavier oils before application. In applying the oil it is preferable to cover the entire width rather than a narrow strip over the crown of the road. The moisture content of the soil is an important consideration also, and unsatisfactory results are almost certain if the road is too dusty or too wet; the soil preferably should be slightly damp. In regard to the mechanical distribution of the oil, any arrangement which wil serve to distribute it uniformly and at the desired rate, is the one to be utilized.

The more elaborate distributors are motor drawn and the oil is forced from the orifices in the horizontal distributing pipe by means of a rotary pump operated from the engine. This equipment is very effective and is to be preferred. However, home-made distributing equipment can be fabricated from motor trucks, tanks, pipe and fittings, in which the force of gravity is depended upon to move the oil. This equipment will give satisfactory results providing factors such a height of tank from the ground, size and spacing of the orifices, size and location of the horizontal distributing pipe, are given proper consideration. Where a short stretch of road or street is to be oiled, the oil may

be ordered for shipment in barrels, and the spreading done by hand, using watering cans with proper sized orifices. Before being placed in any form of distributing device, the oil should be passed through a screen to remove extraneous matter which might obstruct the orifices.

The investigation of oiled roads in various parts of the country reveals that the results secured are subject to considerable lack of uniformity, and consequently to differences of opinion in regard to the feasibility and desirability of the method. Failures in oiling roads can be attributed to a number of causes, but the following are the most important: First, expectation of securing a road equivalent to asphalt or bituminous macadam at a cost less than the interest on the investment for a hard surfaced road; second, ineffective drainage and preparation of the road before oiling; third, application of the oil at the wrong time; fourth, use of an oil of unsuitable quality; fifth, failure to maintain the road after oiling or neglect to apply new oil when necessary; sixth, traffic too heavy; and seventh, soil unsuitable.

One of the most important factors contributing to the failures in oiling roads, is that of applying the oil at a time when the road is not properly worked or when it is too wet or too dusty. The reason for this is of interest. The shipments of oil are placed on sidings where the product generally is transferred directly to the distributor and then placed on the road. Since demurrage soon begins to accumulate against the shipment unless the car is emptied, the tendency is to transfer the oil to the road whether or not it is in proper condition to receive the oil. This difficulty could be eliminated by making some provision for emergency storage to be used if necessary.

The choice of oil of proper quality is another important consideration. The road oils have certain characteristics which make them suitable for the particular use to which they are subjected. The most important characteristic by which these oils are judged is the so-called asphalt content, which for road oils manufactured at refineries in Oklahoma varies from 40 to 70 per cent. At the present time we are conducting a laboratory study of road oils of various types but we do not feel justified in recommending specifications at this time. However, several refineries in Oklahoma are manufacturing road oils which can be depended upon to give satisfactory results if properly applied. In this connection it should be mentioned that where several tank cars of the product are being received some pro-

vision should be made to insure uniformity in the shipments

The Illinois Highway Department specifications for road oils include three grades, E1, E2, and E3. The first mentioned admits Mexican and mixed base oils specially refined; the second admits base oils and the oils of E1 speficiation; and the third admits heavy semi-asphaltic and asphaltic oils. The minimum requirements for "asphalt content" in these specifications is 50%.

There is often a tendency to make use of an oil which is heavier or more viscous than necessary, resulting in insufficient penetration into the soil and the ultimate formation of an asphaltic mat which does not readily lend itself to maintenance and which tends to break at the edges.

The writer's idea of the best oil for surface application to earth roads, is on which combines the highest "asphalt content" with the lowest viscocity, within limits. In Oklahoma, however, a more viscous oil could be used than in the northern states where the summer temperatures are lower.

The cost of oiling earth and gravel roads generally should not exceed $500 to $600 per mile the first year and sometimes will be as low as $250 or $300 per mile. Generally an application of oil is required at least once a year, but after the first year the cost on the average will be less. The price of road oil fluctuates with, and generally does not greatly exceed, that of fuel oil.

In conclusion it may be stated that the discriminating use of petroleum road oil presents an effective and economical method of assisting in the maintenance of unpaved streets, and roads in Oklahoma. Where such work is being contemplated, the Department of Chemical Engineering, State University, can be depended upon to co-operate.

HOW CITIES CAN LESSEN THEIR FIRE INSURANCE RATES

L. C. Ingalls, Oklahoma Inspection Bureau

This subject is one worthy of most careful consideration by every thinking person within the confines of our great county, and I feel grateful for the privilege of being able to address your honorable body today, as it gives me an opportunity of presenting to you some facts gained by long experience in the study of this important matter.

The question "How can cities lessen their fire insurance rates" can in my opinion, be easily answered in three words—"reduce the cost," The cost of conducting the fire insurance business consists of management expense which involves home office, field, bureau and engineering expenses, also agent's commissions and state taxes and fees paid to the State Insurance Department, plus a fee of $3.00 for each agent's license.

In 1922 all insurance companies operating in the state paid to the state treasurer the sum of $708,061.41, while the cost of maintenance of the Insurance Commissioner, Insurance Board and Fire Marshal's offices was only $51,006.33—which as you can see left a handsome "profit" to the state.

By the time the fire insurance companies meet all their obligations of expense and taxes they have only about 60% out of every dollar collected with which to pay losses.

While the cost of conducting the fire insurance business has been constantly ascending during and since the war period, as in all other business, it is interesting to note that the fire insurance rates have not been increased. This is the only business of which, it can be said, that the ultimate cost to the consumer has not been raised. I think this fact is a fine commentary on the high quality and efficiency of the men who guide the destines of this great business.

It follows, therefore, that the fire loss must be reduced if we hope to reduce the cost to the consumer or policy holder and I will endeavor, as briefly as may be possible, to discuss the ways and means by which this desired end can be obtained.

First let us see what the fire loss or waste is and some of the causes for same.

The following information is compiled from absolutely authentic sources and quite likely the amount of fire loss quoted is less than that which actually took place, as all losses are

not reported to the National Board of Fire Underwriters, which compile the only authentic data obtainable:

In 1881 the fire loss of our country was less than one-hundred million; in 1921 the fire loss amounted to five hundred millions. Does it take any stretch of imagination to realize the fact that if this ratio of loss increases in years to come the solvency of our nation would be a question of supreme importance.

The fire loss in the United States for 1921 amounted to over $485,000,000. Compare the following well-known items of expenditure:

Construction of Panama Canal	$ 352,065,542
Salaries of Superintendents and School Teachers in the United States	436,477,090
Total maintenance of U. S. Postal Service	452,322,609

Municipal and state improvements depend upon taxes for their sustenance. Every building burned is removed from the tax duplicate, and the tax it would have produced is paid by the remaining taxpayers. Nearly $20,000,000 was paid by others last year because of 1921 fires, which is unjust and unfair.

The economic loss, which includes, loss of contracts, loss to labor, loss of sales forces and clientele, is so great that none dare to figure it.

It has been proved that over 87% of this loss is due to carelessness and lack of education in connection with ordinary hazards.

During 1921, we lost 14,581 persons and injured 16,212 by fire; 83% are mothers and children up to and including school age.

Over 65% of the number of fires take place in homes. Homes are on fire at the rate of 800 for every working day of the year, causing a daily loss of $250,000 in dwellings alone.

Forty-six and two-thirds percent of all fires caused by carelessness with electricity result from lack of care in the use of the electric flat iron.

It takes $15,000,000 annually to pay for the losses occasioned by bad flues and chimneys.

The cost of carelessness in handling matches, cigars, cigarettes, etcetera, is over $22,500,000.

Spontaneous combustion causes an annual loss of $15,000,000. Part of it comes from the dustless mops used freely in the homes.

Stoves and other heating devices cause a yearly toll of $15,700,000.

Sparks on shingle roofs destroy $8,400,000 a year.

Open lights destroy $4,000,000 annually.

The use of gasoline for cleaning, and coal oil, or other inflammable substances for starting fires caused the death of 769 persons in 1921. One gallon of gasoline in explosive effect is equal to 83 2-3 pounds of dynamite.

Over five schools rae one fire for every day of the year. Seventy-six percent of them originate from heating plants and coal rooms.

American carelessness results in an average of a fire a minute.

In 1870, fire loss averaged $19 a minute; today's figure is $923.

On the average, members of the actuarial bureau of the National Board of Fire Underwriters pay every day a claim for fire loss every 90 seconds.

The committee on Safety to Life of the National Fire Protection Association has declared that fully 90% of school buildings are veritable fire traps.

Leading causes of school fires	1916-1920
1. Stoves, furnaces, boilers and their pipes	$ 3,860,939
2. Electricity	3,263,759
3. Defective chimneys and flues	1,976,460
4. Spontaneous combustion	1,737,154
5. Exposure (including conflagration)	1,266,437
6. Sparks on roofs	1,235,406

The above statistics are for the entire country, but we today are more directly concerned with Oklahoma's contribution to the national ash heap. The following is from the report of our state insurance commissioner for last year, 1922:

The total net fire premiums received by one hundred and twenty stock companies was $8,703,265.73 under which they paid losses of $5,293,759.11 or 60.8%; and their incurred losses were $5,231,541.76 or 60.1%.

While the losses paid in 1922 were 4.6% less than during 1921 and the claims incurred were 10.3% smaller, the fact that both years produced a loss ratio in excess of 55% indicates that there was no underwriting profit in either year, as their loss claims must fall below this percentage to produce such a profit.

The experience of stock fire insurance companies throughout the United States for the year 1921 and 1922 indicates that they paid greater losses in Oklahoma than elsewhere. In 1921 their net premiums on fire policies were $560,637,150 and they

paid losses of $333,580,025 or about 60%, while our loss ratio was 66.5% paid. In 1922 their net fire premiums was $579,-869,530 and they paid losses of $339,045,900 or 58%, while they paid 60.8% in Oklahoma.

On all lines written in 1921 they collected net premius of $703,156,568 and paid 64% or $452,669,553, while in 1922 the net premiums were $718,763,438 and paid losses $424,138,811 or 59%. In Oklahoma for 1921 their total premiums were $12,067,-653.29 and losses paid 67.2% while in 1922 these total premiums were reduced to $11,369,551.77 and paid 62.6%.

From this report of our insurance commissioner we must of necessity ask ourselves the questions: "What is the matter with Oklahoma, and what is the remedy?" The answers to these questions are, to the first—"carlessness and indifference of our people to fire hazards;" to the second—"education of our people to see the great importance of conserving our created and natural resources and the enactment and enforcement of reasonable fire prevntion laws, by our state and municipal authorities."

Until these two problems are solved it is futile to expect that the cost of fire insurance to the ultimate consumer can be reduced. We, who are engaged in the fire insurance business are striving earnestly and conscientiously to "spread the gospel" of fire prevention and we are much gratified with the help and support which we are receiving from our municipal authorities, chambers of commerce, and civic clubs, but much remains to be done and I will frankiy state to you gentlemen of the municipal league that you are largely the determining factor as to whether or not this campaign is a success. I have referred to the potency of reasonably fire prevention laws and the proper enforcement of them.

In my opinion, the one effective law for which there is a crying need is known as the "Personal Liability Law." In effect this law provides that any person who has or keeps on his premises dangerous flues, stovepipes, wiring, inflammable liquids, or other things which are specifically prohibited by the fire prevention laws must remove such hazards when notified in writing by the fire warden, fire chief, or other persons delegated such authority. In case he does not comply with such order and a fire ensues in his premises which is caused by the particular hazard which is ordered removed, the owner then is amenable to the law in the matter of fine or imprisonment, and is required as well to pay any damages which are done to his

neighbors from such cause.

This law, if enacted and properly enforced, would result in our having fewer fires for the reason that the property owner knows the probability of the fine imposed by law but would be more concerned as to the damages which his neighbors could collect for his carelessness. This law is in effect in a number of cities in our country and there is no reason why it should not go into effect in every town in our state. A man who maintains a property which is dangerous either on account of dilapidation or unusual inherent hazard is a menace to his community and should be rigorously dealt with.

In addition the proper conduct of the fire and water departments is of the most vital importance if the proper efficiency is maintained and, gentlemen, this efficiency can never be of the highest order until these departments are removed from politics. The following taken from "Fire and Water Engineering" magazine of recent issue very concisely stresses my points:

Politics in Fire and Water Departments

When a fire or water department is weak in efficiency, apparatus, machinery, service and so on, as a rule, one does not have far to search to discover the cause. In nine cases out of ten, the answer is to be found in one word "Politics." No matter how well grounded the chief is in fire-fighting knowledge, no matter how well the superintendent knows "his book" in water works practice, if this "Sword of Damocles" hangs over him and his department, the result will be a letting down in usefulness and in weakness of fibre throughout.

This is quite natural and practically inevitable. If the head or heads of the department in question—for the influence extends to the commissioners as well as to the chief or superintendent—are creatures of a political boss or a political machine—it matters not which—and owe their tenure of office to his or its whims, efficiency in that department is practically impossible of attainment or maintenance.

The only proper method of administering either the water or fire department is to remove it entirely from any kind of ploitical influence and make the superintendent or chief responsible for its continued usefulness to the city which it serves.

The Oklahoma Inspection Bureau is securing thousands of improvements each year in individual risks, which have the

effect to reduce the cost of fire insurance on such risks, but we find it impossible to induce careless individuals or those who carry no insurance to remove fire hazards which should not be permitted to exist and the only way to reach such individuals is through the strong arm of the law.

Your speaker, as I hope all of you gentlemen know, stands ready at any and all times to render you service for the betterment of fire protection. You have at command and without cost to you, the services of our engineers and inspectors and if anything I may have said in my discussion of this subject will lead to better understanding and co-operation between your League (individually and collectively) and the Oklahoma Inspection Bureau, then we can feel the effort on my part has not been in vain, and that we are on a fair way to solve the problem so vital to our people.

THE HANDLING OF A MUNICIPAL WATER DEPARTMENT

T. J. Embree, Commissioner of Public Works, Okmulgee

The financial management of a municipal water department is a matter of much importance to a city, inasmuch as upon this management depends largely the question of success or failure of the system to function. We should take the management out of politics and make it purely a business proposition; no easy employment or jobs for any but those who know how it is done.

The public should neither knock nor shield the management, but should equip themselves with sufficient knowledge to assist and help remedy any defects. It is impossible to prepare a code of rules and regulations that will apply to individual cases; and the manager should equip himself with every known device and phrase to cope at times with the public.

Taking the water from your source of supply to the consumer is different in each city. For instance, one city has for its supply, deep wells located in the city limits, and for domestic pressure, a tower 90 or 125 feet above the business district. Many think that the management of this would be an easy proposition, but this manager has his troubles the same as the manager whose supply comes from the worst contaminated stream in the state. In contrast, we may consider two cities supplied by the Deep Fork of the Canadian or the Arkansas river; the first manager with deep wells as his source of supply has good clear water at a very low cost of production, while the managers of the other two have to carry theirs through a series of treatments and have tests to make at least twice each day. Every thing is done to make the water safe for the consumer, but we should appreciate at any time suggestions that would be for the benefit of our consumers and for the best interests of the water department.

We would suggest that this department be supplied with the best equipment and that it be required to make all water connections. A price can be charged then that is much cheaper to the property owner than that which the plumber would charge. The department then assumes all responsibility. In installing lead service lines, let your connections be flanged and not wiped joints. By all means, meter each service. Meters are supposed to be O. K. when received from the factory, but

your meter tester will make you doubly sure and should there be any complaint, you can take an old one out and test it. Have the consumer with you; ninety-nine times out of one hundred he will be satisfied.

Then look for the leaks; have a card printed showing the amount of waste through different sized holes according to such and such pressure. Find the leak, generally in the sink or in the toilet; and if it is not visible, use your leak detector which you carry in your pocket and which costs about $2.50. You know it is a grand feeling to have a satisfied consumer and they will always speak a good word.

We would appreciate consumers always bringing their water cards as it saves much annoyance in keeping others waiting while making duplicate bills. We want every patron of water to be satisfied and feel free to call our attention to any grievances that they may have.

After you have about 2,000 consumers you will need an addressograph, billing machine and a posting machine. They are a little expensive but as part of your equipment it is money well spent. Your addressograph saves at least three-fourths of your time and your billing machine about as much. Your posting machine totals your meter readings which, subtracted from the meter reading at the pump station, gives you the amount of loss in transportation. Above all things, do not expect your plant to pay running expensse and interest and sinking fund from the start. I dare say that very few systems are doing it.

Real success will come should you manage it as if it were your own business. Use your best judgment in the employment of your assistants. Let each one have a separate duty to perform and employ those best adapted to it. There is always a man for a place.

One could go into details but it would be tiresome. We each have a way to get results and that is what counts in the end. The following is a little data I have taken from the auditor's report for the City of Okmulgee for 1922-23.

Water Receipts	$ 125,671.75
Water Connections	2,814.40
Total	$ 128,486.15
Expenses	
Salaries	$ 23,220.00
Repairs & Improvements at River	37,347.00
Extensions of Mains	7,340.00

Meters	6,284.00
Labor, including meter boxes and covers	7,292.00
Total Expense	$ 81,483.00

In addition to this, we saved the citizens approximately $37,000 on account of reduction in the insurance rate, which item costs the city a very small sum in comparison to previous rates. This latter is due to recommendations of the state inspection bureau. We have voted a total of $783,000 for water and are much in need of a better supply and also extensions. The cheapest of these extensions is estimated at one and one-quarter million and the greatest at four million dollars.

I would like to say this in conclusion: consider your mananger as a human being; give him a chance to attend all water works conventions and the assemblies of the Municipal League. Listen to his recommendations; use the experience of other water department managers where it will be of service in solving your problms, and you will be rewarded by seeing your municipal water department function as a thriving, successful concern.

STANDARD ACCOUNTING FOR OKLAHOMA CITIES

W. K. Newton, University of Oklahoma

History: Twenty years ago there was not a single city of the U. S. whose financial records and accounts had been so systematized as to furnish the desired information for administrative purposes. Since that date however, there has been rapid progress in this particular phase of municipal affairs, and now we find many cities with well planned and well directed systems of financial records and accounts. The Bureau of Municipal Research in the City of New York, which was founded for the purpose of promoting efficient and economical municipal government and for promoting the adoption of scientific methods of accounting and reporting, etc., to a very large extent is responsible for the movement toward educating the various administrative officials and the public in general as to the needs of ample accounting knowledge and control. For reasons unknown, even administrative officials of cities, until recent years, have consistently or rather inconsistently maintained that the records and the accounts of cities were entirely different from the records and accounts of commercial concerns or private corporations, and as a result, only a few cities carried accounts other than the appropriations which accounts were required to be kept, the alternative of which was a jail sentence. There was nothing in common for the municipal bookkeeper and the so called "commercial" bookkeeper. However, demands for more efficient government coupled with the efforts of the Bureau of Municipal Research and other Leagues, have caused revolutionary changes to be made in many cities.

Many states have passed laws providing for the installation of municipal accounting systems. The various league associations such as the National Municipal League, the League of American Municipalities, the American Institute of Accountants, and the like, have endorsed the plans of uniformity in municipal accounts and standardization of municipal reports. In our current accounting literature, we find frequent discussions of municipal accounts, municipal balance sheets, terminology, etc., all of which is indicative of a movement in the proper direction.

With all the strides forward that have been made, we yet find many municipal bookkeeping systems to be primitive. We may yet classify the systems that are used as follows: (1) We have the cash received and paid system that is used by

petty tradesmen. (2) A single entry system with a few detailed journals or ledgers added to the primitive cash book And (3), we find the thorough-going double entry system with its revenue, expense, property, and other accounts which make it possible to arrive at the results of the operations for the period or in other words a profit and loss statement as is possible in a private corporation.

Now for the most part, the accounting systems of the various cities of Oklahoma will fall under the second type, that is, a single entry system with a few detailed journals and ledgers in addition to the cash book or collection register.

Criticisms: From my own experience and from what I find from other sources, I find that the chief criticisms and faults of the average system of Oklahoma are briefly: (1) The accounts that are found do not reflect sufficiently the condition of affairs, even with the support of the financial statement that is made at the close of the fiscal period. (2) There is no attempt to keep the records by the double-entry method or system of bookkeeping. And (3) we do not find accounts and records that show the proper fund and proprietary relationship.

It is necessary now that mention be made of some of the prevalent accounting practices in order to justify the above critiisms or faults above mentioned. A cash book, an appripriation ledger, a warrant register, a bond register, a customer's water and light ledger, and a minute book generally make up the list of records. Sometimes a sort of ledger of the fund accounts for cash is also to be found. Now, if these records are well and accurately kept ,a great deal of information can be had, but these records are not sufficient. As a rule the general ledger which carry the controls of all the subsidiary ledgers, is entirely omitted. In making up the balance sheet at the end of the fiscal period, one has to assemble the various accounts in a manner very similar to assemblying the parts of a Ford car, and at least a few items or accounts will be scattered fully as much as the parts of a demounted Ford car. Naturally there is a lot of time wasted when facts about accounts are desired, even in merely running down the account's whereabouts. A good example of this is found in the case of taxes receiveable account, which will be discussed a little further on. Since control records should be easily available and accessible for the proper administration of the affairs of a city, the omission of them is a real indictment of the systems that do not use them. The general ledger with a record of the controlling accounts

of all subsidiary ledgers and a record of all other accounts regardless of the size of the balance, should supply this information.

In regard to some of the accounts now shown on the balance sheet of some of the funds, there is at least a division of opinion and practice as to the manner of determining and handling taxes receivable or taxes in process of collection, and the reserve for delinquent taxes. Where there is no specific effort to show the condition of this account from time to time as it should be, we generally have to look up the certificate of approved estimates, and here we find the valuation of the property subject to taxation and the tax levy as approved by the Excise Board. Then after the amount of current taxes for the period has been determined, one can by a mathematical calculation determine the balance yet possible to collect and consequently the reserve for same. As this topic is of vital importance to this assembly since a revenue question is involved, I am going to take the liberty to quote the law and will then proceed to give my interpretation to the act. The statute covering the point in question is found in Section 9699 of the Revised Statutes of the State of Oklahoma, which reads as follows: "When the Excise Board shall have ascertained the total valuation of the property taxed ad valorem in the county and in each municipal subdivision thereof and shall have computed the total of the several items of appropriations for current expense and sinking fund purposes for the county and each municipal subdivision thereof with ten per cent (10%) added thereto for delinquent tax, they shall thereupon make the levies therefor, after deducting from the total so computed the amount of any surplus balance of revenue or levy, ascertained to be on hand from the previous fiscal year or years, together with the amount of the probable income of each from all sources other than ad valorem taxation, provided, that in no event shall the amount of such estimated income exceed the actual collections from such source for the previous fiscal year. Etc., etc." Now, it seems to me that the 10% for delinquent taxes added to the net appropriations, means 10% of the net taxes to be raised and not the 10% of the appropriations. From the latter interpretation, there is always a tax levy to be made since the 10% is for that particular item and is consequently the amount of the reserve which is really a credit to the total taxes possible to collect. Let us take a practical situation and analyze it and from this we can see the injustice it will work to the taxpayer and also the fault from

the accounting point of view. A few months back, a small town on the east side of the state wished to secure an appropriation of about $800 for the coming fiscal year. To meet this appropriation, it actually had $850 in cash on hand as of June 30. There was not outstanding indebtedness as they (the officials) had operated on a cash basis, so the above balance was in reality a cash surplus. Suppose now, we comply strictly with the interpretation of the law as is practiced by many, we would force this town to levy $30 for taxes and the amount for delinquent taxes (10%) would be 10% of the net appropriation or $80. The reserve for taxes is $80 and the net taxes to be raised is $30, a more absurd situation is not possible. It is obviously unfair to add taxes when the cash itself is available to meet the appropriations. Some parties supporting this manner of making this levy, maintain that in the second year this is overcome by the increased surplus. This unnecessary tax levy does not relieve the taxpayer, however. A tax should not be levied until needed.

At no time is there an account for revenues opened up. Nor are expense accounts as such set up. These accounts as controls in the general ledger and with the proper detail ledgers (called subsidiary ledgers) for further analysis, are very important. They are just as vital as sales and the various operation expense accounts of a private corporation. It is a rare case indeed for a municipality to be able to make a detailed statement of revenues and expenditures. A clear distinction should be made between capital and revenue expenditures. So often in practic this is ignored altogether and consequently operation expenses have been increased apparently when as a matter of fact this is not the case. Sufficient detail of expense accounts as well as revenue accounts, should be made in order to present the cost of certain operations, extensions, etc. It is not possible in many places to have a thorough going cost system of records in addition to the regular records, but it is desirable to have a system with such accounts as will reveal the results of operations for the period, with as little time and bookkeeping effort as is possible.

In the balance sheet of the financial statement of the general and sinking funds, a reserve for appropriations (if there is a balance) is set up on the liability side. The amount is the balance in the appropriations and is an offset to the surplus. Eventually if it is permitted to lapse, it will be a credit to surplus. At the close of the fiscal year this is set regardless of

the fact that it may be merely a contingent obligation. In case there are no obligations or possibility of being any, the appropriations will never be encumbered, so consequently it is a misnomer to call this even a reserve for a contingent liability. This account is not one of the regular proprietary group and should not appear in this section of the balance sheet. The account represented by the appropriations merely represents the "legal permit" to spend money and as such, is in no way a reserve or a liability account.

In the second place as regards the question of keeping books by the double entry method, there is no argument to make. The facts are that very few cities are using this method as was brought out in a previous statement. The bookkeeping of all businesses of any consequence is of this kind, and if the proper accounting control is to be had in order to give the administrator a real insight into conditions of the city, there is no alternative, he must have accurate and detailed information. This can be had only by a system that presents checks and balances as does the double entry system. The question of salary for a person able to keep such records should not enter this discussion, for it is false economy to hire incompetent help as well as make-shift systems of accounting control.

Now to the third main criticism of Oklahoma accounting, the question of accounts that show the proper fund and proprietary relationship. The form of balance sheets for our various funds is not a standard one; at least, it does not measure up to the requirements of those generally presented by cities of many states. We do not make a clear distinction between strictly fund relation accounts and real or proprietary accounts. For example, we show the item of appropriation balances on the regular balance sheet without any qualification whatever. This item is one of the fund group of accounts, that is, it merely shows a limit that is set for further expenditures and as such is in no way a real liability or a proprietary group account, the proprietary group account meaning, of course, something real or tangible as opposed to a mere memorandum account. Such accounts as appropriations, budget requirements, reserve for contracts, payrolls, etc., available cash surplus, unapplied surplus, etc., are accounts that propose to show relations that must be studied if laws are not violated and financial programs are not disregarded. They do not show actual assets and liabilities as such as do the proprietary group accounts. Take for example, a case where the city manager wishes to know just how much

further he may enter into contracts, he should have at his command the amount of contracts, open market orders, etc., that have been entered into. These can be had from the various reserves for these purposes that have been set up in the fund group of accounts. Thse accounts are not yet true liabilities but may become so in a short time, and for this reason it is well to know these facts. Also at the latter part of the fiscal year it is often desirable to know just what the condition of the requirements for the coming year will be. If all the postings have been made to this account he could determine at a glance just the amount that would be applicable to the next year. This is valuable information and should be available for the administrative officials. Revenue accounts should have detailed information of a nature that would reveal the exact collections as well as the accruals to revenue. The same is true of the expense accounts. The accrual method of accounting should certainly replace the cash method.

The balance sheet, then, in order to be standard in form and also in order to furnish the desired information of a fund nature as well as proprietary, should be of a dual form showing the two groups of accounts. The proprietary group following the fund group, is possibly the most logical arrangement of the accounts on the balance sheet.

Remedies: I suggest that the first possible remedy would be to open up a general ledger with the additional accounts that are needed to show the desired information to the executives or managers. This ledger would be arranged in very much the same manner as a general ledger of a bank. I would expect to carry a control account in this ledger of all accounts that required detail or subsidiary ledgers. Each fund would require a separate ledger, but this is positively necessary since each fund would and does require a separate balance sheet statement. Each ledger would be complete in itself and if posted daily or weekly or monthly would show the exact condition of affairs just as a bank would. A municipality represents quite a corporate investment, why not run it on a strictly business basis with strictly scientific, up-to-the-minute accounting records? Too much is left to guess work. Too many municipal adventures are failures simply because there is not a system of accounting records of the exact operations, available for consulting preparatory to expenditures for like adventures. We have very few comparative statements or records. Who of this audience ever saw a comparative balance sheet of a municipal fund account? The

are rare, indeed. Do business men pass up such information? Surely there is some value.

Again, it goes without saying, that these records should be kept by the double-entry method, for one can scarcely keep them accurately and scientifically by any other method.

A clear distinction should be made in the accounts that are of the fund nature. These should not be confused with the real accounts as we have in our balance sheets, but should be separated in the balance sheet as above suggested. The proper grouping of the accounts with the proper revenue and expense schedule will not only be standard, but will be intelligible to the executive and to the average citizen as well.

PUBLIC UTILITY REGULATION IN HOME RULE CITIES IN OKLAHOMA

Frederick F. Blachly and Miriam E. Oatman

The constitution of Oklahoma provides that any city with a population of more than two thousand may "frame a charter for its own government consistent with and subject to the constitution and laws of this state."(1) It fails, however, to enumerate the specific powers which home rule cities may exercise. The first state legislature attempted to remedy this defect by passing the following law:(2)

"When a charter for any city of this state shall have been framed, adopted and approved according to the provisions of this article, and any provisions of such charter shall be in conflict with any law or laws relating to cities in force at the time of the adoption and approval of such charter, the provisions of [illegible] such state law or laws to the extent of such conflict; and such state law or laws shall not thereafter be operative in so far as they are in conflict with such charter; Provided, that such charter shall be consistent with and subject to the provisions of the constitution, and not in conflict with the provisions of the constitution, and laws relating to the exercise of the initiative and referendum, and other general laws of the state not relative to cities of the first class."

The language of this statute is so general that it has not prevented legal conflicts in regard to the powers and privileges of home rule cities. When questions of competence have come before the courts, decisions have been based, by and large, on the principle that, according to the constitution, and the statute quoted above, the home rule city may regulate through its charter provisions any matter of purely local concern. "It has been the uniform holding of the court that city charters become the organic law of the municipality, and supersede the laws of the state in conflict therewith in so far as they attempt to regulate purely municipal matters."(3) Any matter, however, which concerns the state as a whole, is regulated by state law and cannot be controlled by charter provisions; or, in other

(1) Const. of Oklahoma., Art. XVIII, Sec. 3,a.
(2) R. L. Okla. 1910, Sec. 39.
(3) Wilson v. Donnelly, 291 Pac. 367.

words, the home rule charter must be consistent with and subject to state laws of general application, which do not relate to purely local or municipal affairs.(4) This principle has been applied in the decision of a number of delicate questions, of which the one that concerns us at present is: What are the powers of a home rule city in regard to the regulation of public utilities which are not owned and controlled by the city, but which operate within its boundaries?

The state constitution is exceedingly ambiguous upon this point. In the article devoted to municipal corporations, it stipulates that, " No grant, extension or renewal of any franchise or other use of the streets, alleys, or public grounds or ways of any municipality, shall divest the state or any of its subordinate subdivisions of their control and regulation of such use and enjoyment. Nor shall the power to regulate the charges for public service be surrendered; and no exclusive franchise shall ever be granted."(5) It places the power of regulating corporations in the hands of a corporation commission, whose powers and duties are in part subject to change by the legislature. However, the article dealing with the corporation commission provides, "That nothing in this section shall impair the rights which have heretofore been, or may hereafter be, conferred by law upon the authorities of any city, town or county, to prescribe rules, regulations, or rates of charges to be observed by any public service corporation in connection with any service performed by it under a municipal or county franchise granted by such city, town, or county so far as such service may be wholly within the limits of the city, town, or county granting the franchise."(6)

The first section quoted is evidently designed to forbid the alienation of regulatory power by virtue of any grant of franchise. Moreover, its express provision that grants or franchises shall not divest the state or any of its subordinate subdivisions of "their control and regulation of such use and enjoyment," would seem to mean that the subdivisions, as well as the state, possess power of regulation. The courts have recognized the former interpretation of the section, but not the latter. Thus, in the case of Oklahoma Railway Company v. Powell,(7) it was held that:

"This is a limitation (not a grant of power) and prevents

(4) See Lackey v. State ex rel Grant, 29 Okla. 255, 116 Pac. 913
(5) Const. of Okla., Art. XVIII, Sec. 7.
(6) Const. of Okla., Art. IX, Sec. 18.
(7) 33 Okl. 737, 127 Pac. 1089

the municipality from ever surrendering or contracting away such power when it may be granted to it by the sovereign power."

On the other hand, in the first Oklahoma case which involved the question of municipal regulation of public utilities,(8) the court held that it was the intent of the constitution, "That the power to regulate the charge for public service by municipal corporations is a power which it was the intention of the framers of the constitution should be exercised by the sovereign power only . . ." It was decided that in the absence of express delegation of such power, the city had no right of regulation.

Oklahoma City, which has a home rule charter, attempted to regulate telephone rates by franchise; and suit was brought testing the city's powers in this respect.(9) The court decided that such right of regulation lies outside the competence of even a home rule city, basing its decision on the ground that this right can only be derived from the legislature by an express grant or by necessary implication from power expressly granted. The grant to the city of the right to give franchises does not carry with it the power to fix rates by franchise or otherwise.

In the case of Pawhuska Oil and Gas Company vs. City of Pawhuska,(10) the question at controversy was the power of the state to change the terms of a municipal franchise, by means of a legislative enactment providing that all gas must be sold by meter, whereas the franchise made provision for sale both by meter and at a flat rate. The court held that the state had the right to change the terms of the franchise, under Article XVIII, Section 7, of the state constitution (quoted above); and expressed the following opinion:

"Having been expressly reserved by said section of the constitution to both the state and the municipality, and again expressly reserved to the city by the act authorizing the municipality to grant the franchise, the reservation of the power was as much a part of the franchise as if written therein. It follows that whether the franchise amounted to a contract between the city and the company we need not say, for, sure it is, the state, by the act complained of, had a right to say to the company as it did in effect by the terms of said act that, in the interest

(8) South McAlester-Eufaula Telephone Co. vs. State, ex rel Baker-Reidt Mercantile Co., 25 Oklahoma, 524, 106 Pac. 962.
(9) Pioneer Telephone and Telegraph Company vs. State, 33 Okla. 724, 126 Pac. 1073.
(10) [illegible] Okla. 244, [illegible] Pac. 118.

of the conservation of the natural resources of the state, the company should no longer be permitted to sell gas at a flat rate, but thereafter was required to furnish the same to its customers (with certain exceptions named in the act) through standard meters and at meter rates. And this was a proper exercise of the police power."

Similar views were expressed by the court in the famous case of Pawhuska v. Pawhuska Oil and Gas Company.(11) In this case the city of Pawhuska, acting under a statute(12) which conferred upon cities of the first class the power to make contracts with public service corporations for furnishing gas or electric lights, and to regulate by ordinance the rates to be charged, had granted a franchise for twenty-five years to the defendant company, with the proviso that the rates charged should not exceed fifteen cents per thousand feet of gas. Subsequently, the 1913 session of the state legislature passed an act(13) which provided that the state corporation commission should have general supervision over all public utilities furnishing heat, light, water, and power, and should also have power to fix and establish rates and prescribe rules, requirements, and regulations affecting the service. Late in 1916, the Pawhuska Oil and Gas Company appealed to the corporation commission for an increase in rates. That body granted an increase to twenty cents per thousand feet of gas. From this award the city appealed to the state supreme court, which upheld the increase made by the corporation commission. While the court seemed to fully concede that the legislature by the 1910 statute had delegated power to cities to regulate their own utilities, yet it held that this delegation of power was to endure only until such time as the state might see fit to exercise its paramount authority; that under the constitution the legislature could withdraw this delegated power from the city whenever in its judgment the public interest might require such action; and that it was effectively withdrawn by the act of 1913. This case, then, stands for the proposition that since the legislature is supreme in respect to rate making, it may delegate to cities the right to regulate the rates of public utilities operating within their boun

daries, and may also take away such right at any time that it sees fit to do so.(14)

The case of City of Sapulpa vs. Oklahoma Natural Gas Company(15) raised the question whether the state, acting through its agent the corporation commission, could make a mutual agreement with a gas company to change the rates charged by the company, without the consent of the city. The court stated that the general principle that, "whether a state which has delegated authority to a municipality to regulate service and fix rates may revoke such authority . . . depends upon the statutes of the different states and the act which gave to the city the power and authority to enter into said franchise and contract." In the case in question, Sapulpa had derived its right to fix rates from the Act of Congress(16) which provided that certain general laws of the state of Arkansas, as published in Mansfield's Digest, should be put into effect in the Indian Territory. Sections 754 and 755 of this Digest gave to the mayor and city council of a municipality the right to grant to a person or company an exclusive franchise.

The court held that since Congress had not clearly conferred upon the city power and authority to agree upon a fixed rate for a definite time, and since Congress could have revoked such authority even if it had been conferred, or could have regulated public utilities through some agency, the state, which inherited the powers of Congress in this respect, could also revoke or regulate in like manner. Since the state of Oklahoma has authorized the corporation commission to regulate public utility rates ,when this commission and the holder of a franchise mutually agree upon a rate different from that fixed by the municipality in the franchise, said rate becomes binding.

An important case in regard to control of public utilities by home rule cities is that of City of Bartlesville vs. Corporation Commission.(17) In this instance the city charter itself provided for the exclusive regulation of certain classes of utilities by the city.(18) This case brought up the question definitely,

(14) See the City of Durant vs. Consumers Light and Power Company, Okla. [illegible] Pac. 861.

(15) [illegible] Okla. 186, 192 Pac. 223.

(16) Commonly called the Organic Act, 26 U. S. Stat. L. 81.

(17) [illegible] Okla. Rep. 129 Pac. 806.

(18) "The City of Bartlesville shall have the power by ordinance to fix and regulate from time to time, reasonable rates, fares, tolls and charges to be charged or exacted for public services by telephone, gas, electric [illegible] street railway companies, and by any and all other persons, companies or corporations operating under a grant, franchise, or license from the city, and to prescribe the quality of the service; and the value of any franchise granted by this city shall not be considered in the compensation to which shall be considered the reasonable rates for compensation." Charter, Art. II, Sec. 9.

whether or not a charter granting to a city the right to regulate the rates of public utilities supersedes the state law on the subject. The court held that it does not, saying, "The supreme legislature of the state having seen fit to place the power of regulating rates for gas furnished by public utilities in the corporation commission, in our judgment the state has such a sovereign interest in this subject of legislation as to preclude the charter cities of the state from entering the field by charter provisions."

Not only the fixing of rates, but also the prescription of rules and regulations governing public utility services, has been declared by the courts to lie outside the competence of a home rule city. In the case of Oklahoma Railway Company vs. Powell et al,(19) the following facts were brought out: Oklahoma City, acting under its 1902 charter, had passed an ordinance granting a franchise to a street railway company, and providing for the regulation of such company "with reference to the operation or maintenance of said street car system." An act of the territorial legislature of 1903(20) granted to corporations the right of constructing street railways in cities or towns upon "such terms and conditions as may be agreed upon between such corporations and such city or town." After Oklahoma became a state, Oklahoma City adopted, under the home rule provision of the state constitution, a new charter which also provided for regulation of public utilities by the city. Presently the state corporation commission imposed upon the street railway in question certain rules and regulations in respect to hours of service, transfers, and so on, which conflicted with the regulations imposed by the city. A case arising out of this conflict was brought before the court for decision. The court held that the orders of the corporation commission were valid, saying: "In view of said rule of strict construction (referred to earlier in the case of corporate powers being applicable to grants of power to municipal bodies which are out of the usual range, we must conclude that Oklahoma City under its charter, adopted by virtue of Section 3a and 3b of Art. XVIII of the constitution, without further authorization by the legislature, may not prescribe rules and regulations to be observed, and fix rates to be charged by the appellant in performance of its duties toward the patronizing public as the public service corporation."

In the case of City of Tulsa et al. vs. Corporation Com

(19) 38 Okla. 737, 137 Pac. 1058.
(20) S. L., p. 141.

mission,(21) which was decided in October, 1922, the question arose whether the corporation commission had authority to order a street railway to remove its line of railroad from one street where it had a franchise to another street in the city where it had no franchise. The court held that since the corporation commission possesses only such powers as are expressly granted to it, or conferred upon it by necessary implication, it had no jurisdiction in this instance, and could not compel the railway company to make the change; since the right to grant franchises belongs to the city, and has not in any manner been granted to the corporation commission.

Summary

In examining the foregoing cases, we find a consistent policy on the part of the courts, of treating the regulation of public utilities in cities as a matter of general rather than local interest.

The decision in the South McAlester-Eufaula Telephone Company case laid down the principle that a city may not exercise the right of regulating public utilities by means of franchise provisions, unless this right is expressly delegated to it by the legislature. The Pioneer Telephone and Telegraph Company case stood for the same principle. In the two Pawhuska Oil and Gas Company cases, and in the case of the City of Sapulpa vs. Oklahoma Natural Gas Company, it was held that the legislature may delegate to cities the right of regulating public utilities, and may also revoke such delegation of power whenever it sees fit. The decision in the Bartlesville case went further, in holding definitely that the provisions of a home rule charter do not supersede state law on the subject of utility rate regulation.

In the case of Oklahoma Railway Company vs. Powell, the question of regulating services as well as rates was brought up. The court held that provisions of a charter adopted by a city under the section of the Oklahoma constitution which provides for home rule do not give such city the right to prescribe rules, regulations and rates for public utilities, without further authorization from the legislature.

The Tulsa case involved a question of franchise rights. It was held that the corporation commission cannot compel a public service corporation to move from streets through which its franchise permits it to pass, to streets where it has no franchise rights; since the power to grant franchises rests with the city rather than the corporation commission.

(21) 1 Okla. Reporter, 48.

From these decisions the position of Oklahoma cities in regard to public utility regulation would seem to be as follows: First, the city has no inherent right to regulate public utilitites as to rates or service. Second, the legislature can delegate such right to the cities if it sees fit, and can also revoke this delegation of power. Third, the city cannot acquire such power by means of charter provisions. In other words, the city is entirely under the power of the state legislature in respect to the regulation of public utilities; and franchise or charter provisions which conflict in this matter with state law, or with the orders of the corporation commission, to which the right of regulation is delegated, are invalid.

It is interesting to note that in only one early case was mention made in the decision of the constitutional provision (quoted above) in regard to the right of cities to regulate public utilities. It may be that the courts failed to consider this passage, as it appears in a rather obscure situation, as a proviso incorporated in a long section dealing with the power and authority of the corporation commission. On the other hand, it may be that they were aware of its presence in the constitution, but felt that it need not be discussed, on the ground that its reference to rights of regulation "conferred by law" implied the need of further legislative enactments. Even in this instance, it may be questioned whether the statute making city charters superior to state laws is regard to local matters should not have been interpreted as fulfilling the meaning of the provision.

Whether home rule cities, or all cities, in Oklahoma should as a matter of public policy be permitted to regulate public utilities operating within their boundaries, is a problem which does not fall within the scope of this paper. As a matter of fact, the courts have held in every case which has arisen, that the municipalities do not possess such right of regulation.

RULES, REGULATIONS AND ORDERS OF THE OKLAHOMA CORPORATION COMMISSION, AS THEY AFFECT CITIES AND TOWNS

E. S. Ratcliffe, Attorney for the State Corporation Commission

It is peculiarly pleasing to me to be able to appear before this organization at this time in an attempt to discuss the subject assigned by the program committee, for the reason that at one time it was my privilege to be actively associated with your organization and was permitted to serve it as its president for two consecutive terms.

It fell to my lot to have at one time served as Mayor of a small town for a period of six years, and I feel that I know something of the difficulties and responsibilities which you gentlemen are assuming in undertaking to work out some of the many very difficult problems which affect the administration of town and city affairs in the state of Oklahoma.

It is a pleasure to me for the further reason that at the time of my activity as a city official, and as a member of this organization, I had the pleasure of forming the acquaintance of many of your present members, including your present president, Hon. R. B. F. Hummer of Henryetta, and the secretary-treasurer, Dr. F. F. Blachly of the University of Oklahoma. To Mr. Blachly, in my opinion, more than to any one individual in the state of Oklahoma, is due the credit for building up and fostering the organization from its earliest experience to the present time.

The corporation commission of the state of Oklahoma occupies a relative position of importance with respect to numerous phases of municipal administration. During the early period of its existence its jurisdiction was limited to the constitutional delegation of authority over transportation and transmission companies operating within the state. At different times, however, since the constitution of the state of Oklahoma was adopted, and as a matter of fact, at the first session that the legislature held after statehood, additional duties have been imposed, no session of the legislature which I can at this time recall having neglected to extend and greatly increase the authority, power and jurisdiction of the commission with respect to the regulation of public utilities and businesses which are affected with a public interest.

I remember very distinctly, during the early days of this organization, that the cities were somewhat jealous of the power

to regulate public utilities operating within their boundaries. It was during those days that the principles were established by the supreme court of the state of Oklahoma, that the corporation commission's jurisdiction and authority extended to the setting aside of contractual relationship between public utilities, and the setting aside of franchise regulations both with respect to service and rates when found to be in conflict with public policy as viewed from the standpoint of the state at large.

During the early days, the only utilities over which the commission exercised its jurisdiction with respect to either rates or services, which could be construed as affecting cities and towns, was that jurisdiction possessed over telephone and telegraph lines. The 1907-08 session of the legislature enacted what has been known since as the anti-trust act. One of the sections of that act, which is now Section 11032 Compiled Oklahoma Statutes, 1921, defines what is known as a "public business" and places the authority in the hands of the corporation commission to regulate all such businesses which are affected with a public consequence, both as to the price charged for the rendition of service and as to the character of service itself which is rendered. It is under this statute that the commission has undertaken since its early days to regulate the service rendered and the rates charged by the ice companies engaged in the manufacture and distribution of ice for public consumption within the state of Oklahoma. Much discussion and many decisions of the supreme court of the state have resulted from this enactment. One of the cases went the entire route of the supreme court of the United States for final decision. This was the case of the Oklahoma Operating Co. vs. Love, 252 U. S. 331, 40 Sup. Ct. Rep. 338, which involved the regulation and establishment of proper rates and charges for the service rendered by laundries operating in Oklahoma City and vicinity. The decision of our own supreme court upheld the authority conferred by the act, but the supreme court of the United States held the act invalid for the reason that no right of appeal had been granted in the enactment of the statute. In the meantime, however, and while the cause was pending in the supreme court of the United States, a session of the legislature remedied the defect and provided for an appeal to be taken from orders of the corporation commission, promulgated by virtue of this authority. In the Oklahoma Gin Company case, 63 Okla. 10, the supreme court of the state in construing this statute practically nullified its

effect insofar as the jurisdiction of the commission over public business was concerned, for the reason that the word "or" was construed by the court in that case as meaning "and" instead of "or" as was originally written by the members of the legislature. This decision of the supreme court left the matter of the regulation of institutions other than those over which specific authority had been granted to the corporation commission, in very grave doubt, and the commission proceeded with extraordinary caution in its attempt to regulate during the period of this uncertainty. However, in 1920, the commission promulgated an order fixing service rules and regulations for persons or companies engaged in the distribution and sale of ice for public consumption. This was done after a general hearing held before the commission, which was participated in by nearly all of the large concerns engaged in the ice business. The rules and regulations established were not objectionable, per se, to the ice distributing companies, but certain companies objected to the commission's exercise of any jurisdiction whatsoever over ice distribution plants. From the order put into effect an appeal was taken to the supreme court of the state, which has been recently decided in favor of the authority of the commission to hear the testimony and from the facts adduced to determine as to whether or not any business is so affected with a public interest as to bring it within the jurisdiction of the commission as to rates charged and service rendered. This decision of the supreme court in its effect is very far-reaching, as it apparently places any business which, by reason of the nature, extent or the existence of a virtual monopoly therein, or the commodities bought or sold therein, or offered or taken by purchase or sale in such manner as to make it of public consequence or to affect the community at large as to supply, demand or price or rate thereof, or such business as is conducted as a combination in restraint of trade, within the jurisdiction of the commission, and subjects them to regulation and control by the corporation commission as to practices, prices, rates and charges.

This statute and the construction placed upon it by our supreme court would necessarily have its limitations, as set forth in a recent decision by the supreme court of the United States which held invalid and unconstitutional the Kansas statute placing within the jurisdiction of the court of industrial relations of that state the manufacture of food products, articles of clothing, the mining of fuel for public consumption, or the transporta-

tion of food, clothing or mining products. In the opinion in that case, which was rendered by Chief Justice Taft, it was pointed out after a consideration of the leading causes in the United States which have considered businesses affected with a public interest, that in all or nearly all of the businesses which had been considered in those decisions, the thing which gave the public interest was the indestructible nature of the service, the exorbitant charges, and the arbitrary control to which the public might be subjected without regulation.

Judge Taft atetmpted to distinguish the preparation of food, clothing and the mining of fuel, from the classes of business which had been declared subject to regulation heretofore by various states, and which regulation had been upheld by the courts of this country. In discussing the subject he used the following language:

> "In the preparation of food, the changed conditions have greatly increased the capacity for treating the raw product, and transferred the work from the shop with few employees to the great plant with many. Such regulation of it as there has been, has been directed toward the health of the workers in congested masses, or has consisted of inspection and supervision with a view to the health of the public. But never has regulation of food preparation been extended to fixing wages or the prices to the public, as in the cases cited above, where fear of monopoly prompted, and was held to justify, regulation of rates. There is no monopoly in the preparation of foods. The prices charged by plaintiff in error are, it is conceded, fixed by competition throughout the country at large. Food is now produced in greater volume and variety than ever before. Given uninterrupted interstate commerce, the sources of the food supply in Kansas are countrywide, a short supply is not likely, and the danger from local monopolies less than ever.
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> "It is very difficult under the cases to lay down a working rule by which readily to determine when a business has become 'clothed with a public interest.' All business is subject to some kinds of public regulation, but when the public becomes so peculiarly dependent upon a particular business that one engaging therein subjects himself to a more intimate public regulation, is only to be determined by the process of exclusion and inclusion, and to gradual establishment of a line of distinction. We are relieved from considering and deciding definitely whether preparation

of food should be put in the third class of quasi public business, noted above, because, even so, the valid regulation to which it might be subjected as such could not include what this act attempts.

"To say that a business is clothed with a public interest is not to determine what regulation may be permissible in view of the private rights of the owner. The extent to which an inn or a cab system may be regulated may differ widely from that allowable as to a railroad or other common carrier. It is not a matter of legislative discretion solely. It depends on the nature of the business, on the feature which touches the public, and on the abuses reasonably to be feared. To say that a business is clothed with a public interest is not to import that the public may take over its entire management and run it at the expense of the owner. The extent to which regulation may reasonably go varies with different kinds of business. The regulation of rates to avoid monopoly is one thing. The regulation of wages is another. A business may be of such character that only the first is permissible, while another may involve such a possible danger of monopoly on the one hand, and such disaster from stoppage on the other, that both come within the public concern and power of regulation."

The general authority for the exercise of control over such institutions as engaged in a public business, is found in a decision by the supreme court of the United States as early as 1876, the case of Munn vs. Illinois, 194 U. S. 113. That decision involved the service rendered and the charge exacted for the elevation of grain in Chicago. The supreme court of the United States, upon an appeal from a statute of the state of Illinois declaring that grai nelevators were affected with a public interest and therefore a public business and subject to regulation, held that notwithstanding the business of the elevation of grain did not require the exercise of eminent domain and did not require the grant of a franchise as a condition precedent to engaging therein, the business was affected with a public interest; and construed the dedication of the property used in the business to a public use in which the public has such an interest as justifies its regulation.

Referring again to the Kansas and Oklahoma statutes: Is the manufacture of food products and of clothing of public consequence? Is the mining of coal or of salt of public concern? Can a business, merely because of its size, or because it has

become a monopoly, be of public consequence? Does it affect the community at large within the rule laid down in the Munn case? Now the public is affected to some degree by every kind of business, but whether that effect is sufficient to become of public consequence might depend upon several factors, such as use of the highways, public convenience, monopoly, possibly upon mere size of the business, or the importance to the public of the service or commodity sold. But when one talks about judging the nature of public or private business by the test of public consequence, he is in pretty deep water. Take the telephone and newspaper business for instance. Which is of more public consequence? Important as the telephone business is, there are few who would not rather be deprived of the use of this convenience than of their newspapers. If we still say that the telephone is more vital to public welfare because it is more intimately connected with business and social relations, this difference would appear to be one of degree rather than of principle. There is no essential difference between a public business and a private business. A small merchant in a city, who sells to the public in his neighborhood, is as much a public servant in fact as the gas company which sells to the entire community, although the merchant's business may be so small that the general public is not affected by much of anything that he does. But, under the doctrine of the supreme court of the United States, he will be deemed to be engaged in a private business so long as the conduct of his business may not be of public consequence and affect the community at large.

The rule for distinguishing between public and private business is not very definite but it is the best we have. The courts must decide as best they can the cases as they arise. It was once said, "Equity is according to the conscience of him that is chancellor, and as that is larger or narrower, so is equity. 'Tis all one as if they should make the standard for the measure of a chancellor's foot. What an uncertain measure this would be; one chancellor has a long foot, another a short foot, a third an indifferent foot; 'tis the same thing in the chancellor's conscience." The application of the broad rule laid down in the Munn case for the determination of what constitutes a public calling is a matter which lies wholly within the judgment and conscience of the courts, and it is much as if the measure were a chancellor's foot; but it is perhaps well that it is so, as it permits the courts to adapt themselves to changing conditions. A detailed consideration of the applications that

have already been made of the rule in special cases would be out of place in a nontechnical discussion of the subject.

Since the enactment of the statute under discussion, various other statutes extending the jurisdiction of the corporation commission have been enacted, the most important of which is the act of the legislature in 1913 defining a public utility and conferring jurisdiction upon the commission over public utilities. Under this act which defines as coming within the classification of public utilities property owned, operated and managed for the conveyance of gas by pipe line; for the production, transmission, delivery or furnishing of heat or light with gas; for the production, transmission, delivery or furnishing electric current for light, heat frequently arises in connection with the production and transmission, delivery or frunishing electric current for light, heat or power; and for the transmission, delivery, or furnishing of water for domestic purposes or for power, there has been much contention as to the exact meaning of the terms used by the legislature in this definition.

As an example, one of the difficult problems which the commission has to determine is the exact point at which the line may be drawn as between property which may be used by a public utility in connection with the service rendered by it, and which may be classified or claimed as private property. This frequently arises in connection with the production and transportation of natural gas from the well to the burner tip in the rendition of service by gas companies. It has also arisen in connection with the production of electric current by plants which do not distribute directly to the public the current produced. The supreme court of this state has recently, in two or three decisions, construed this statute in a way which the commission considers to be very favorable to regulatory authority. In the case of the Okmulgee Gas Co. vs. Corporation Commission, Vol. XXI Oklahoma Appellate Court Reporter, p. 274, it was held that the commission had authority to bring within its jurisdiction companies engaged in the transmission of natural gas from the well to the city gate or to a point where it is delivered to the distributing system, regardless of whether or not such a company exercised the right of eminent domain or conducted its business under a grant from municipal authority in the way of a franchise. In other words, the effect of this decision, which has since been supplemented by the decision of the Oklahoma Natural Gas Co. vs Corporation Commission, Vol. XXII Oklahoma Appellate Court Reporter, p. 302, dated

June 21 ,1923, appears to be that the commission may exercise this jurisdiction in its regulatory authority over property used in connection with the transmission or distribution of natural gas in the state of Oklahoma.

As the definition affects the production and distribution of electric current, there has also been a very recent decision of our supreme court in the case of the Southern Oklahoma Power Company vs. Corporation Commission, reported in Vol XXIV Oklahoma Appellate Court Reporter, dated November 10, 1923. The court in discussing the facts in this case said:

> "No effort is made to require the corporation to do something which it has not professed, but only to regulate the corporation in connection with the service which it professes and actually renders. The plaintiff in error contends that the corporation commission is attempting to extend its regulatory jurisdiction over a company which has never made any dedication of its property to a public use or made any profession of service to the public. Such is not the case. The statute has prescribed that the very service performed by this corporation is a public service and when the corporation undertakes to and does perform that service which the statute has defined to be a public service such action constitutes a dedication of property to the public use."

The conclusion of the court seems to be the only practical one which might have been arrived at. This for the reason that if it were possible for companies engaged in the manufacture and distribution of electric current to separate their properties, as was done in the case before the supreme court, by incorporating a manufacturing plant as a separate concern from the distributing system, and thus escape state regulation, the authority of the commission to regulate rates would be curtailed to such an extent that its effectiveness would be practically destroyed, for the price of the commodity at the burner tip or at the consumer's meter is at all times dependent upon the price of the manufacture of the current or commodity at the point of manufacture.

The definition of a public utility as used by the section of the statute under consideration, exempts municipally owned and controlled plants from the jurisdiction and control of the corporation commission. This, in our opinion, is a wise provision and we believe that it has been followed by the Oklahoma legislature in all of the statutes enacted which in any wise might effect concerns either owned by a municipality or concerns which

are made to appear should be properly left to the control of the cities and towns of the state. This has been exemplified in the recent enactment of the motor bus act, which confers jurisdiction upon the corporation commission to regulate the transportation of freight and passengers by motor bus over the public highways of the state. The act specifically exempts from the jurisdiction of the commission, the operation of motor busses wholly within the limits of any city or town within the state of Oklahoma.

Probably the thing of most general interest to the larger cities and towns of the state at the present time in connection with the corporation commission's activities, is the regulation of a proper rate and charge for the distribution and sale of natural gas. During the period of inflated prices and increased operating costs, incident to the war, the commission found it necessary to make certain increases not only in this class of service but in other classes as well. After the close of the war and after the recession of prices had begun the commission attempted to "beat back," to use a well known phrase brought into prominence a few years ago by one our candidates for governor, and to re-establish as nearly as possible, rates for these services which were in a measure comparable with the rates in effect prior to the commencement of the war. This, of course, was in some respects difficult to do. In the handling of gas rate cases the commission is confronted with a different condition from that which it confronts in the regulation of any other public business within the state. It is a well known fact that the life of a gas field is not permanent or continuous and that the history of gas fields throughout the United States has been and is now that depletion is rapid and a time comes eventually at which the pressure of the gas in any given field or well becomes so weak as to render same useless insofar as its transportation to cities and towns is concerned for use there. Therefore one of the big questions entering into the adjustment of a gas rate necessarily is the question of depreciation and amortization; the gas companies usually contending for a much higher rate of depreciation or amortization on account of the rapid depletion than is insisted upon or is usually allowed in the establishment of a rate for other character of service.

The Oklahoma Natural Gas Company is the pipe line company in the state of Oklahoma which renders service to numerous towns and cities within the state's limits. In 1920 the commission, after a very lengthy and extensive investigation cover-

ing a period of approximately one year, and embracing numerous hearings at various points served by that company, established, so far as the state of Oklahoma is concerned, a precedent in that it established a gate rate to be charged by that company for gas delivered at the city gate for distribution not only through its own distributing systems where it distributes the gas, but for the other distributing companies receiving gas from its hands for public distribution. The commission attempted to protect the public by the establishment of such a rate as would not be burdensome in its effect when applied to the quantity of gas ordinarily used for domestic consumption. It established a rate of 25c per thousand cubic feet at the city gate. The company accepted the order and appeared at the time satisfied with the rate established, but within the six months allowed for an appeal to the supreme court from orders of the corporation commission, it took an appeal from the rate established to the supreme court of the state, and upon failure to secure a supercedeas either from the corporation commission or from the supreme court staying the effectiveness of the rate established, pending the litigation, it applied to the United States district court for the western district of Oklahoma for injunctive relief upon the ground that the rate established by the commission was confiscatory and was violative of the fourteenth amendment to the constitution of the United States. At approximately the same time, bot hthe Oklahoma Gas and Electric Company, the distributing company in Oklahoma City, and the Okmulgee Gas Co. (the distributing concern in Okmulgee), filed similar applications in the United States district court seeking similar refief. These cases were heard at several different time during the year 1922, the commission and its representatives taking the position that the order being legislative in its nature, and not judicial, could not be enjoined in the federal courts under the decision of the supreme court of the United States in what is known as the Prentis case, 211 U. S. 210, involving a rate order of the corporation commission of the state of Virginia, whose constitutional provisions are identical with those of the state of Oklahoma. This contention was upheld by the three federal judges who are required to sit in cases of this kind, under the provision of the federal statutes; and from their decision the gas companies took their appeal directly to the supreme court of the United States. However, pending the appeal and prior to the decision by the three judges, the district court had permitted the Oklahoma Natural Gas Company

to put into effect a higher rate than that fixed by the commission, and had required it to make bond conditioned upon a prompt repayment of excess charges during the period covered by the effectiveness of such increased rates. The supreme court of the United States, upon final hearing, decided against the contention of the commission, reversed the decision of the three judges, and held that the United States district court for the western district of the state had jurisdiction at any point in the controversy at which confiscation could be established; thus holding that the United States district court for the western district should proceed to assume jurisdiction as a matter of comity and to hear the case upon the facts as well as the law. Upon such final hearing again before three judges, the court arrived at the conclusion that the rate established by Order No. 1886 for the Oklahoma Natural Gas Company at the city gate was confiscatory and unconstitutional, and the judgment rendered permitted the Oklahoma Natural Gas Company to put into effect its own rate pending its appeal from the order of the corporation commission to the supreme court of the state of Oklahoma and the decision of that court. The Oklahoma Natural Gas Company thereupon placed in effect a rate of 40c as a city gate rate, instead of the rate fixed by the coporation commission of 25c per thousand cubic feet, which resulted in the distributing concerns increasing their rate in the same proportion for the service rendered directly to the consumer. It will be remembered that this was the rate put into effect by the company itself, and over which the coporation commission, under the terms of the injunction granted by the federal court, could not in any wise interfere pending a decision of the supreme court of the state of Oklahoma. The Oklahoma Gas and Electric Company put into effect in Oklahoma City a rate of 68c per thousand feet whereas the rate under the commission's order was 45c per thousand cubic feet. On June 19, 1923, the supreme court of the State of Oklahoma handed down its opinion in the appeal from the decision of the corporation commission to that court, in which it established a gate rate for the Oklahoma Natural Gas Company, of 38c per thousand cubic feet for gas delivered at the city gates in the cities and towns supplied by that company. In other words, the supreme court of the state put into effect a straight increase in rates charged for natural gas by the Oklahoma Natural Gas Company of 13c per thousand cubic feet.

This history of gas litigation is recited for the purpose of eradicating a very prevalent opinion among the citizenship of

the state of Oklahoma, that the increased price of gas which has been brought about during the past few months is traceable to the corporation commission of the state, and is for the purpose of placing the blame, if there is any blame attached to such an increase, where it properly belongs; and for the purpose of showing the city officials of the cities represented here that the corporation commission has been busily engaged during the past two or three years in an attempt to readjust downward the price of the commodities supplied and furnished by the public utilities of the state of Oklahoma as far as that has seemed possible, practicable, and just both to the consumer and to the utility rendering such service. Immediately upon the decision of the supreme court of the state, the commission, after due deliberation, decided that the proper thing to do in connection with the gas rates in the state of Oklahoma was to conduct an extensive investigation for the purpose of attempting to ascertain what is a just and reasonable rate, not only for the Oklahoma Natural Gas Company at the city gate, but for the distributing concerns served by it in the various cities and towns of the state. This work was commenced as early as was practicable, after the decision of the supreme court. A corps of engineers, headed by a very eminent man of that profession, has been employed and has been busily engaged in that work since that time, with a view of arriving at a correct conclusion at as early a time as is possible under the circumstances. It is hoped that this work may be completed early in the coming year, and that a new rate order may be made effective, reflecting the results of the research.

The constitution of the state of Oklahoma provides that the orders of the corporation commission on appeal to the supreme court shall be regarded as prima facie just, reasonable and correct.

A great number of the courts of the United States, in considering similar provisions of statutes and constitutions, have looked upon orders of regulatory bodies, such as the corporation commission, as being prima facie just, reasonable and correct, and have in numerous instances refused to express an independent judgment with respect to the effect of the orders made by such bodies. However, in these latter years it is the tendency of the courts to scrutinize (in some instances it seems very severely and critically), the conclusions arrived at by the various utility commissions with respect to rates fixed for services rendered.

The commission at all times in the past has been extremely anxious to have the co-operation of the city officials of the state of Oklahoma in an attempt to arrive at a just conclusion as between the public served and the company which engages in the rendition of a public service.

In a great many instances where rate applications are filed with the commission, no representative of the city or town affected appears for the purpose of opposing the increase in rates applied for. However, in all such cases, the commission's representatives endeavor, in so far as it is possible to do so, to acquaint themselves with the facts relative to the service which is being rendered, both as to its efficiency and as to the sufficiency of the rate being charged; and the commission assumes the position at the hearing that it should at all times attempt to protect the consumer from unjust charges and inadequacy of service.

In such general hearings as were referred to in connection with the Oklahoma Natural Gas Company's gate rate case, the commission has been favored with the assistance of several of the city attorneys of the cities of the state of Oklahoma, together with a general representative selected by a number of the larger towns affected.

We believe that the record taken, as a whole, of the Commission during the past several years, discloses the fact that at all times the commission has done its utmost in an effort to protect the consumers of commodities furnished by the utilities in question.

Practically no rule, regulation or order is ever made by the commission which does not in some way affect the cities and towns of the state of Oklahoma, in that such orders, rules and regulations affect the citizenship making up such cities and towns. For this reason it would be impossible to cover the entire scope indicated by the title of the subject allotted me for discussion.

Suggestions are occasionally heard that no interference should be made with the rates originally established at the time of the granting of a franchise to public service concerns in the cities and towns. In reply to the suggestion it is only necessary to say that in Oklahoma City alone the corporation commission, during its life, it is said has saved a sufficient amount to the citiens of this city in telephone rates alone to have constructed every public school building which the capital city now boasts of with so much pride. It is true that in other instances it has

become necessary to increase the rate and charge fixed by franchise. An extreme illustration of this necessity is called to your attention in the case of a franchise granted to the American Indian Oil and Gas Company in the city of Poteau, Oklahoma. The American Indian Oil and Gas Company secured a competitive franchise to distribute and to supply natural gas to the consumers of Poteau. This franchise was secured in a campaign which was hinged upon the promise of a supply of gas for consumption in that city at 15c per thousand cubic feet, whereas the company which was then rendering the service was charging a higher rate per thousand cubic feet for the gas supplied. The citizenship of Poteau gladly granted the franchise desired by the American Indian Oil and Gas Company, whereupon the company which had theretofore been engaged in the gas busi at a rate higher than that fixed by the franchise granted the American Indian Company necessarily lost that business which it had, and was compelled to dispose of its plant to the new franchise holders. Upon the securing of the monopoly in the gas business in Poteau, the new franchise holder immediately applied to the corporation commission for an increase in its rates above the 15c rate fixed by the terms of the franchise. The proof disclosed that the 15c rate was not such a rate as would permit the company to remain in the business of supplying natural gas for public consumption. Therefore the commission was compelled under the facts, notwithstanding the representations made by the company to the public in its effort to secure the franchise, to grant an increase in the rates for natural gas supplied in Poteau.

Numerous similar instances might be called to your attention but these two reflect the extremes which the records of the corporation commission disclose to have been the experience in the operation of public utiliites which have secured franchises establishing rates for the rendition of public service within the state of Oklahoma.

As a final analysis, insofar as the rendition of gas service is concerned within the state of Oklahoma, what the public really desires is adequacy and efficiency of service, and in a great majority of instances the public manifest a disposition to pay that which is reasonable for the rendition of an adequate and efficient service, frequently entering into agreements through either representative bodies, such as boards of city commissioners and city councilmen, upon a rate to be placed in effect by an order of the corporation commission. These agreements,

almost without exception, have been approved by the corporation commission, and the rate thus established has become a permanent rate to be charged in such cities and towns.

In connection with the rendition of service which is affected with a public interest, the commission has a general rule which requires the company engaging in a public service until authority has been secured from the commission for its discontinuance. Another rule of the corporation commission, promulgated within the last two years, requires that when application is made for an increase of rates charged by public utilities within the state of Oklahoma, copies of all exhibits and records which are to be depended upon by the company as evidence before the commission, must be filed with the city authorities for their consideration and scrutiny at least thirty days before the hearing may be had before the commission. This is for the purpose of allowing the city authorities to know the basis upon which the utility is demanding an increase in its rates for the service rendered. This rule has frequently resulted in such agreement as to the rate to be charged as has been heretofore referred to, between the representatives of the public and the utility making the application.

These remarks briefly and very ramblingly reflect some of the difficulties and some of the problems which the commission has to contend with and which necessarily affect the cities and towns of the state of Oklahoma.

MUNICIPAL SWIMMING POOLS

John Meisenbacher, Superintendent of Parks, Tulsa

As cities increase in size, problems become more numerous and urgent. One of the greatest needs of a growing community is to provide pools for its children. Every city should have a municipal swimming pool.

The swimming pool with its muddy bottom is neither satisfactory nor sanitary. Of course, every town is not blessed with a running stream and a gravel bed and for that reason the pool should be so constructed that it can be easily drained and kept in a sanitary condition. It should be built so it can be drained very quickly.

A municipal swimming pool is used by all classes of people, and therefore it should be drained and refilled with fresh water at least once a week. A small stream should be continually flowing into the pool, so that it will carry off all surface pollution.

Pools should be so constructed that the danger of drowning will be minimized.

In operating every pool, there should be life-guards. No swimming pool is complete without a locker or bath-house. To protect the health of others the swimmers should be required to take a shower before entering the pool.

All pools should be built in the open where the surface is entirely exposed throughout the day to the direct rays of the sun with nothing to obstruct, so that every breeze can change the air over the water.

Municipal swimming pools are a necessity. A great many people are not able financially to visit the paid pools, and so a municipal swimming pool fills this want.

After considerable experience, I have come to the conclusion that pools are a necessity in every playground. I find that on grounds without pools the attendance is very limited.

After seeing a great many types of pools, I have come to the conclusion that the best pool is one which is a happy medium between the swimming pool and the wadding pool. Timid children can wade and the more venturesome can swim. So in building pools, the depth of water should be so arranged for both classes.

My idea of an ideal municipal swimming pool is one circular in construction, about 160 feet in diameter. Across the

center there should be a deep water channel about 40 feet wide and 8 feet deep for the benefit of experinced swimmers.

The sectors on either side of this channel should range in depth from 2 feet at the edge and radiate to a depth of 4 feet 10 inches to the center, where there should be a step-off into the deep water channel. The step-off should be protected by upright concrete posts, through which is stretched a large guide rope. These two sectors afford ample opportunity for inexperienced swimmers, while the deep water channel gives experienced swimmers sufficient swimming facilities. This channel makes a very good straightaway of more than 50 yards and a guarantee of maximum safety. A swimmer can never be more than 20 feet from safety.

This pool is of reinforced concrete construction, entirely surrounded by a concrete walk. It should be lighted with plenty of incandescent lights. There should be a six inch water intake and a large enough sewer connection so that it can be emptied and refilled in as short a time as possible. It should be provided with an overflow gutter running around the complete circumference, which should have enough connections to carry off all surface pollution. In my opinion, this pool is as sanitary as it is possible for a public swimming pool to be made with natural facilities.

Swimming pools are no longer an experiment, but have come to be recognized as a necessity. The public expects them so that their children may congregate and pass away the time and be off the street where there is more or less danger from the traffic.

A boy or a girl may excel in one particular line of play, but swimming will develop both the physical and the mental being.

You make no mistake in promoting and encouraging all kinds of clean and healthy water sports. For every dollar invested, we get dividends of health, strength, good behavior, obedience, or, in a word, good citizenship.

MUNICIPAL OWNERSHIP VERSUS PRIVATE OWNERSHIP OF ELECTRIC LIGHT PLANTS IN OKLAHOMA

Z. Z. Rogers, City Manager, Duncan.

It is a known fact that during the past year, what are known and commonly termed Hi-Lines Companies, are making a most determined effort to convince the public, in general, that it is absolutely impossible to get efficient service from any source but theirs, and that a municipally owned electric light plant has no more chance of operating efficiently, and without a loss to the city, than does Jack Walton have of again becoming governor of the State of Oklahoma.

Hi-Line Companies, Next Best to Municipal Ownership.

Now don't understand me to say that these great companies are not beneficial to the state and community which they serve: for as a matter of fact, I am led to believe that small communities such as have during the past year abandoned municipal plants, have this as their bet. I am not at all surprised to know that the towns of Snyder, Tipton, Cowatta, Manitou, Eldorado, Minco and Pocasset have made contracts with Hi-Line Companies for electric service; yet it must be remembered that these towns are very small and that no private concern would attempt to furnish current to them at a reasonable rate, and expect to make a profit; and they seem to be fortunately located, in that the Hi-Line Company passes their way, and pauses to serve them.

Local Situation.

In making comparisons it is always best to speak of the condition that we, as individuals, have had to overcome. I am at this time reminded of a condition that existed in the city of Frederick, during the years of 1914-15, the electric light plant in that city was then owned by a private company, and this company of men were of the very highest type; they were doing, it seems, all in their power to give good service, but were not in a position financially to keep step with the progress of that growing little city, and lacked confidence in the city's future their rate was high and their equipment was loaded to full capacity. The city was continually demanding extension of service and a better rate for the current; the city itself was using for lighting streets a system which at that time consisted of

nine old-fashioned arc lamps, for which the city was paying $125.00 per month. Industry was handicapped by reason of no inducement being offered for them to use electric power in their plants. After meeting with the officials of this plant a number of times, they finally refused to make concessions and advised that they would be willing to dispose of their plant to the city of Frederick, at an agreed price. An election was had and purchase made and it was my good fortune during the years of 1915 to 1923 to have had charge of this plant in the capacity of mayor, and I take pride in stating to you, that this city at once installed additional and adequate equipment in their plant and made extension of service lines throughout the entire city, added about 100 overhead street lights in the residential section and approximately 85 whiteway standards in the business section, equipped their water service department so that all water is being pumped by this plant, are furnishing free current to the churches, libraries, auditoriums and other public buildings, and in addition to all this, are giving the best service that the ciyt has ever experienced, and there has never been a year that this plant has not shown a very large profit over and above cost of operation, interest on investment and depreciation.

High-Line Company Tries to Buy Plant

The best evidence of the success of this plant at Frederick is that only recently a High-Line Company made an effort to purchase, and after having had auditors in the office checking up the records, they at first announced that it would be impossible to operate at the rates which now exist. This statement was published in the daily paper of that city, having been made by the attorney for the company, but later the president returned with some revised figures, and offered, what he termed, a reduction in rate, and further offered to furnish current to pump water at 3c per KWH and to light streets at 4c per KWH. The following editorial from the Frederick Leader, which speaks the sentiment of the people there, will give you a very good idea as to what they think of municipally owned electric light plants.

Editorial from the Frederick Leader—August 27, 1923.

Show Us

"One reason why the Frederick electric light plant is attracting so much attention at this time, is the success with which it has been handled through municipal management. The city is fortunate in having had a very efficient Superintendent in charge

of the plant with business men on theCity Council and that during the past few years, when taxes, to say the least, have been 'high enough', the municipal plant has been able to earn sufficient money to help bear the burden of City Government.

It is a very unusual record that the local plant has made—that of not only taking care of its own investment, by way of paying of interest, and sinking fund taxes, but of furnishing free service to the city for street lighting, to churches, to the library, by way of pumping the city water, and in numerous other ways, and in addition to all this it has actually earned the city a very substantial sum to help bear the burden of governmental expense.

Quite naturally the Mayor and City Council are not looking for buyers of the plant at this time, even though it is apparent that, in the course of time, there will be improvements and replacements to be made. The plant's ability to take care of its own replacements and repairs thus far, with such additions as have been needed, has been one of the gratifying features connected with it.

Another feature is the fact that the plant sustains a considerable pay roll which goes to home men, who spend their money with Frederick taxpayers.

On the other hand, there certainly is no impropriety in the city officials allowing any individual or company who so desire to get any facts which they seek about the plant's operations and to make any suggestion they want to make relative to service or purchase. To use a trite saying, these investigations and operations do not cost us anything, and they may result in some valuable information for the plant management, the city officials and the public generally. If they do nothing more than to make us better satisfied than ever with the plant as it now is operating, they have done us that much good.

The manner in which the Frederick plant has been operated is distinctly a bright spot in the history of municipal plants in the state of Oklahoma, where at present the tendency is to sell to private concerns. Under the circumstances, Frederick may well afford to sit back complacently and listen to anything any company has to offer, with the knowledge that it has something mighty good in its municipal plant, and with a "show me attitude."

Paid Advertisements.

Why, gentlemen, I have in my possession an advertisement,

or rather what the privately owned company would have you think a news item, in the form of a notice that the town of Cowatta, Oklahoma, has voted 136 to 4 against municipal ownership, and in my own city (where, by the way we have competition) the newspapers are furnished with every item of information concerning the change of ownership in electric plants from municipal to private, but never a word is said about the many cities which have been driven to municipal ownership by the fact that the private ownership concern failed to give service. Let us take the case of the city of Mangum, wherein it was not only necessary to resort to municipal ownership but was necessary to operate in competition with private ownership for a number of years, during which time, the officials of that wonderful city were subjected to all sorts of dirty tricks, but thanks to that estimable member of this League, Dr. Border, those responsible didn't get very far with that kind of stuff. They are gone from that city now and I am reliably informed that the Mangum plant is operating satisfactorily to every one concerned.

Situation at Duncan Much Like That of Mangum.

Prior to the time that the good people of the city of Duncan, deemed it advisable to vote bonds for the erection and construction of their electric light power plant the word "SERVICE" was positively extinct and its performance a lost art in so far as electric service in that city was concerned; rates were much higher than at this time, and after repeated appeal to the ownership and to the corporation commission, the people took the matter into their own hands and removed the old dirty looking lines from the main street of the city and piled them upon the property of the owner, called an election and voted bonds for the erection of, I think, the most complete electric light plant in Southwest Oklahoma.

Why make distinction between water works and light plants as owned by the municipality? The only reason that electric plants are not deemed just as necessary to municipal government as water plants, is the lack of time to prove the inability of private ownership to successfully meet the demand of the municipality. If you believe that water works plants should be owned by private concerns, then it is up to you to prove that all the great cities of the United States have gone wrong in the water business, and let me assure you that I fully believe that next only to water, electricity is most necessary to the public health, comfort and safety of the city in which we live.

Policy of Private Owned Concerns.

The policy of the private owned concerns of the country have from the very beginning been not to render service, but to get rich by the capitalization of public confidence and the exploitation of public necessity. The general rule is that a company comes into our city and by shrewd argument convinces the officials that they need to grant it a franchise to operate in the city; and after having received the same they at once capitalize it for rate making purposes and ask the corporation commission to grant them 8 per cent net return on this capitalized gift. They are also inclined to the policy that the burden of the people, on account of the cost of capital, shall never grow less but shall be increased at every possible opportunity.

I am for municipal ownership, because I know that it is successful from a standpoint of service and finance, and I believe most of the cities who own their electric light plants win bear me out in this statement. I have only recently made a survey of some of the cities which do and some which do not own their electric light plants, and I find that those cities which do own their plants are in much better financial condition than are those of like size which do not. Let us not forget that the bonds and securities sold by the privately owned plant are as a matter of fact public obligations; and that it is their city, after all, that has builded their plant; and that this is a debt, not like the bond debt, but one that we never get paid off. You know that when we are talking of public debt and the people's burden, reference is too often made to the government of the municipality, and no thought is given to this gigantic public debt that is made in the name of the unity concern, which is after all, the greatest public debt and burden of all, and is in fact many times greater than the combined bonded debts of the cities of the United States.

Referring again to the cities of Duncan and Frederick, I am reminded that this same company made advance to the city of Duncan for purchase of their electrical light and power plant. We were, of course, courteous to them and heard their proposal, which was very similar to the one made the city of Frederick. We began figuring and found that during the month following this proposal we had used for the city of Duncan, alone, approximately 120,000 KWH of current, which if paid for at the rate proposed to the city of Frederick—i. e., 3c for power and 4c for street lighting—the cost to the city would approximate $4,000.00 per month or $48,000 per year, together with say $2,000.00 per

month for domestic and power service, making a total of $72,000.00 per annum. Then we figured the investment on this plant at original cost of $300.000.00, and found that we have depreciation of $15.000.00 and interest payments amounting to $18,000.00, which, together with cost of operating as shown by estimate this year approved amounting to $23 000.00, makes a total cost of operation of $56,000.00. Deducting this from the revenue above shown, the figure seems quite encouraging, the amount being approximately $16,000.00, and this plant only twelve months old. Now, as further proof of this statement, I wish to add that prior to 1920 the city of Duncan paid to the privately owned concern approximately $1,000.00 per month to furnish power to pump only one deep well, whereas this city has expanded to such an extent during the past four years that now eight such wells are required to furnish a sufficient water supply.

I am of the belief that one of the prime reasons for municipal ownership is found in the fact that the main incentive in private ownership is profit, and in municipal ownership is the rendering of service and through the desires of the private ownership corporations to make more and more money, they have become in the control of the state legislature and the city commissions one of the greatest menaces to democratic government which the country has yet developed.

Public Regulation Has Failed.

Some fifteen years ago, or at the very beginning of regulation of public utilities, public regulations was accomplished with some degree of success, and you are bound to admit that it has had a checkered career in this state, and that in more recent years it is known to have failed politically, financially and from a standpoint of public service. At first the public utilities were dead against regulation, but when they saw that it would be forced upon them, they undertook to control it, and in this they have had marked success. They helped to pick the commissioners and write the laws; they have undertaken to get their own men on the staff; they cultivated the commissioners socially; bowed to them officially, and took care of the weaklings among them; and even to this hour they have never in good faith recognized the regulating body of this state, and have made every effort to thwart it and to transform it into an agency for its own selfish good. The federal courts are the tribunal for the companies: to whom they appeal from the commission for the protection of property rights. If the commission makes the

rates too low for the federal courts bowl them over; if they make them too high the courts are not interested, they have no jurisdiction to reduce rates for the benefit of the public, but, as in the case of the gas rate in this state, can function for the corporation.

It has been proved beyond any further doubt that it is absolutely impossible for municipal government and private utilities to co-operate, because of the fact that in order to do so the municipality is always required to bow to the will of the utility company. When it becomes necessary for the city government to go into conference with the utilities company they always find the company represented by the leading attorneys, ex-judges and the most noted men that money can buy. And after all, we must realize that this money is furnished by the municipality itself and that they are actually fighting us with our own money.

Depreciation and Rate Making.

In their frantic effort to disabuse the minds of the people relatively to municipal ownership, the private utility corporations are forever howling about the depreciation of the municipal plant; but when the time comes to ask for **rate adjustment** they act as though such a thing had never been heard of, as in the case with our city wherein the gas company is at this time seeking an advance in rate. They claim a total valuation of $360,000.00 for rate making purposes and $79,310.00 for tax paying purposes; and during a recent hearing it developed that in this claim they had included an old line of approximately 20 miles in length that had in days gone by served the city and which had in part, at least been removed. They valued this at $108,650.00 and asked that the commission allow them return on this investment; and we find many other things perhaps not so luminous, but just as ridiculous in their claim; and this company gentelmen, claims to be the largest utility concern doing business in the southwest. Now, if such companies as this would and do resort to these things, don't you think it is positive proof that private ownership is not the best policy for the municipality and is merely a shrinking from public and civic responsibility.

The first thing that a private utility does with its employees is to teach them to think as they think, do as they do, and to remember that they have no obligations to the public, so long as the company's interests are concerned; and that they

shall be guided by the policy of all good getters that he who asks little, shall receive little; and that he who asks much shall be so rewarded. They also teach them to become expert at multiplication and addition, but subtraction and division become foreign to their nature.

I deplore a community that does not know enough to attend to its own business. I regret to see a city that is being everlastingly driven by the private utilities corporations, and in my opinion public utility service is public business.

ZONING FOR OKLAHOMA CITIES

By Fred E. Suits, Formerly Attorney for the City Planning Commission, Oklahoma City, Oklahoma

The municipalities of Oklahoma were fortunate in securing the passage of a zoning law by the Ninth Legislature, which will be found in the 1923 Session Laws, page 301. Thirty-five states have already given to their cities, in some form or other, zoning legislation, and today more than 22,000,000 people live in 183 zoned cities, towns and villages, according to a recent statement made public by the Division of Building and Housing of the Department of Commerce.

I say that Oklahoma cities are fortunate, because the law which was given them was drafted in the light of the experience which other states and cities had after the practical operation of many different kinds of legislative enactments.

The Division of Building and Housing, United States Department of Commerce, with the aid of the best experts that could be found, prepared a standard state zoning enabling act, and that act embodies the best provisions of the laws of other states after a thorough test from a practical standpoint. The Standard State Zoning Law, with some changes, has become a law in Oklahoma.

The Oklahoma Zoning Law gives to all cities and incorporated villages, alike, the power to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of the yards, courts and other open spaces, the density of population, and the location and use of buildings and structures and land for trade, industry, residence or other purposes. That power is given for the purpose of promoting health, safety, morals, or the general welfare of the community.

In order to obtain the benefits of the zoning law, any city or village may be ordinance divide the municipality into districts of such number, shape and area as may be deemed best suited to carry out the purposes of the act; provision may then be made for regulating and restricting the erection, construction, reconstruction, alteration, repair or use of buildings, structure or land; and all such regulations must be uniform in each district, but the regulations and restrictions in one district may differ from those in other districts. Such regulations, of course, must be made with reasonable consideration as to the character of the

district and its peculiar suitability for particular uses, and with a view to conserving the values of buildings and encouraging the most appropriate use of land throughout the municipality.

Provision is made for determining the boundaries of the district, enforcing the regulations, the giving of notice, and a public hearing thereon, before the same shall become effective.

Ample provision is also made for amending the regulations, restrictions and boundaries, after notice and public hearings.

Before any city or village can avail itself of the powers conferred by the Zoning Act, the legislative body must appoint a zoning commission to recommend the boundaries of the various districts and appropriate regulations to be enforced therein.

Authority is contained in the Act for the creation of a Board of Adjustment, of five members, which shall have power to:

(1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this act or of any ordinance adopted pursuant thereto.

(2) To hear and decide special exceptions to the terms of the ordinance upon which such Board is required to pass under such ordinance.

(3) To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

And in exercising the power conferred upon it, the Board of Adjustment may reverse or affirm, wholly or partly, or modify the order, or decision of the administrative officer appealed from.

Appeals may be taken from the action of any administrative officer by any person aggrieved, or by any officer, department, board or bureau of such municipality, to the Board of Adjustment; and from the Board of Adjustment to the District Court, where such appeal is given preference over all other civil actions and proceedings.

The movement for the effective zoning of cities has spread so rapidly that on January 1 1923, there were 129 municipalities

in the United States, operating under zoning regulations. During the year more than fifty other cities joined in adopting such ordiances.

Oklahoma City was the first city in the State to adopt a zoning ordinance, which became effective September 4, 1923. Soon after the ordinance became effective the Building commissioner refused the issuance of a permit for the construction of a filling station at the entrance to Lincoln Boulevard, the main thoroughfare leading to the State's Capitol, and the validity of action brought in the District Court of Oklahoma County against the Building Commissioner for a writ of mandamus the zoning ordinance and the state law were assailed in an compelling the issuance of the permit. The District Court upheld the state law and Oklahoma City's zoning ordinance, after a careful review of the decisions of the various states which had considered the question.

To illustrate the tendency of the recent holdings of the courts upon the question of enforcing building restrictions in areas set aside for specific residential purposes, I quote from an opinion of the Supreme Court of Minnesota, as follows:

> "The notion of what is public use changes from time to time. Public use expands with the new needs created by the advance of civilization and the modern tendency of people to crowd into large cities. The term 'public use' is flexible, and cannot be limited to the public use known at the time of the forming of the constitution. It must be admitted that owners of land in congested cities have, of late, through selfish and unworthy motives, put it to such use that serious inconvenience and loss result to other landowners in the neighborhood. It is time that courts recognize the aesthetic as a factor in life. Beauty and fitness enhance values in public and private structures. But it is public and private structures. But it is not sufficient that the building is fit and proper, standing alone; it should also fit in with surrounding structures to some degree."

There is no longer any question about the right of the State to pass a state zoning law, nor can there be any question about the right of cities and villages, under authority from the State, to pass zoning ordinances, where regulations and restrictions are made with reasonable consideration as to the character of use to which property shall be employed, and with a view to conserving the value of buildings and encouraging the

most appropriate use of land throughout the municipality.

The City of Tulsa has under consideration, and will soon pass a zoning ordinance, and it is to be hoped that other cities of the State will take advantage of the machinery provided by the state law, and put into operation effective zoning ordinances.

The following zoning apothegms by Charles B. Ball, taken from "Buildings and Building Management," epitomizes the reason why every city should have a zoning ordinance:

"Zoning sells a town. An unzoned town is like a dead stock of goods on the shelves.

"Zoning is a flexible harness in which city expansion works; it may be adjusted in case it galls or frets at any point.

"Zoning will flatten out the human pyramid, which congestion has created in a crowded portion of the city.

"Zoning substitutes method for chance symmetry for confusion, progression for patch work and order for chaos in city development.

"Zoning affords for the poor man such security from nuisances and invasions as the rich may provide at great expense."

In conclusion, I want to say that the credit for securing the passage of such wholesome legislation as the zoning law, city planning law, and regional planning law, was due very largely to the effective work done by the members of the Oklahoma Municipal League. I congratulate your organization and am proud of the splendid work it has done and is doing.

SECRETARY-TREASURER'S REPORT

Statement of the Financial Condition of the
OKLAHOMA MUNICIPAL LEAGUE

December 14, 1923.

STATEMENT

Balance on hand December 1, 1922		$207.60
Reciepts for year		541.85
Total receipts		$749.45
Expenses	$698.80	
Balance on hand, consisting in:		
Bank balance of $39.65		
Petty Cash of $11.00	50.65	
Total Expenditures and balance on hand		$749.45

ANALYSIS OF RECEIPTS

Dues	Amount
Dues for 1923, paid since December 1, 1922	
Name of city	
Chickasha	$ 20.00
Heavener	10.00
Wynnewood	10.00
Weatherford	10.00
McAlester	20.00
Purcell	10.00
El Reno	15.00
Poteau	10.00
Guthrie	20.00
Muskogee	30.00
Henryetta (Dues for 1922)	15.00
Shawnee	20.00
Blackwell	15.00
Cushing	10.00
Bartlesville	20.00
Pawhuska	10.00
Frederick	10.00
Fairview	10.00
Anadarko	10.00
Oklahoma City	40.00
Enid	20.00

Tulsa	40.00
Drumright	15.00
Lawton	15.00
Ardmore	20.00
Mangum	10.00
Sapulpa	20.00
Quinton	10.00
Norman	10.00
Sulphur	10.00
Grandfield	10.00
Claremore	10.00
Duncan	10.00
*Total Dues	$515.00
Other Receipts	
One-half expense Municipal League Banquet	$ 25.00
Returned check	.50
Expense Account	1.35
	$541.85

ANALYSIS OF EXPENDITURES

Expenses of President on legislative work	$ 57.50
Expenses of Secretary-Treasurer	76.50
Salary of Secretary-Treasurer	200.00
Banquets	105.80
Telephone Calls	51.95
Printing and Stationery	60.75
Magazines, Books, etc.	66.70
Stenographic Work	68.25
Press Clipping Bureau	10.00
Miscellaneous	1.35
	$698.80

*NOTE:—The dues for Marlow were paid in advance for this fiscal year, and recorded as a part of the balance from the preceding year

SUMMARY STATEMENT

Balance forwarded		$207.60
Receipts		541.85
Expenses	$698.80	
Balance on hand	50.65	
	$749.45	$749.45

REPORT OF RESOLTUTIONS COMMITTEE

Oklahoma City, Oklahoma

To the Honorable President and Members,
Oklahoma Municipal League:—

WE, your Committee on resolutions, beg to respectfully submit the following report.

FIRST—TO THE MAYOR AND COMMISSIONERS of OKLAHOMA CITY, we wish to express our hearty appreciation for the wonderful welcome and entertainment accorded us as visitors to your beautiful city.

SECOND—TO THE MEMBERS OF THE MUNICIPAL LEAGUE, we wish to express profound gratitude for your presence at this Convention and appreciation of the interest you have taken in making this meeting the best ever held in the State.

THIRD—TO THE OFFICERS OF THE LEAGUE, we desire to express our appreciation of your untiring energies during the past year, and commend you in your loyal interest, foresight, and judgment in planning and carrying out this program filled with interests vital to all cities in Oklahoma.

FOURTH—We desire to express our appreciation of that civic patriot Mike Donnelly, whom we have known so long and who has ever been a member of this league—a Charter Member, and always a booster, and who, as a Municipal Officer for fifteen years, stands before us with a clean record, uncontaminated in character, and ever ready to look the world square in the face, with a conscience clear and void of such actions which would cause Oklahoma City to blush.

FIFTH—The LEAGUE desires to especially express our appreciation of our Secretary, Dr. F. F. Blachly, and of the University of Oklahoma, for the interest taken and the great work performed in the operation of the League.

SIXTH—Inasmuch as there is no provision made for a Committee on recommendations and realizing the benefits already derived through the operation of the League, and being desirous of the continuation and improvement be it therefore resolved:

FIRST—That a Member from each of the Eight Congressional Districts in Oklahoma be appointed for the purpose of soliciting additional members of the League.

SECOND—That the Legislative Committee be commended for their work during past years; and we recommend that this

committee take such steps as they deem most advisable to obtain legislation upon the following matters, which to our minds, will give great assistance and relief to the municipalities of Oklahoma.

1. That sufficient appropriation be obtained for the Oklahoma University which will enable the University to carry on its work of Municipal Research.

2. In view of a recent decision of our Supreme Court, that a bill be passed tending to a general revision of the law affecting search and seizure.

3. That more effective work is being obtained by cities where the Chief of Police is appointed than where said officer is elected; therefore, we recommend legislation wherein all Chief of Police Officers are appointed by the Executive Officer of such municipality, with the consent of the governing body.

4. It has been called to our attention that the various Chambers of Commerce of the State are trying to secure legislation to make more effective the work of Municipal Courts, and we recommend that this Committee co-operate with them in this work.

Respectfully submitted,

JOHN CARR,
Z. Z. ROGERS,
J. N. BURK.

OFFICERS ELECTED FOR 1924

President.....I. J. Underwood, Tulsa
Vice-President.....Z. Z. Rogers, Duncan
Secretary-Treasurer.....Dr. F. F. Blachly, Norman
Trustees .....
John Carr, Enid; J. W. Ordendorff, Henryetta; O. Coffman, Chickasha

Program

The Tenth Annual Convention

OKLAHOMA MUNICIPAL LEAGUE

Held at

CITY HALL, OKLAHOMA CITY

December 14 and 15, 1923

FRIDAY, DECEMBER 14

Morning Session—9:30 O'clock

Address of Welcome ----------

O. A. Cargill, Mayor, Oklahoma City

Reply ----------

R. B. F. Hummer, President Oklahoma Municipal League, City Attorney, Henryetta

Report of Secretary-Treasurer ----------

F. F. Blachly, Norman

Zoning for Oklahoma Cities ----------

Fred Suits, Oklahoma City

Centralized Purchasing ----------

W. G. Doake, City Manager, Ardmore

Tourist Camp Construction, Maintenance and Regulation-----

Round Table Discussion

A. Jack Kivett, Mayor, El Reno

J. S. Garrison, Mayor, Pauls Valley

C. C. McKnight, Mayor, Anadarko

R. L. Merrill, Mayor, Sulphur

Afternoon Session—2:00 O'clock

The New Paving Law of Oklahoma ----------

J. F. Martin, City Attorney, Oklahoma City

The Assessment of Abutting Property For Construction of Sidewalks ----------

Robert R. Pruett, Waurika

Home Rule and Public Utility Regulation in Oklahoma--------

Miriam E. Oatman-Blachly, Norman

What Shall We Do About Street Parking----------

John Carr, Mayor, Enid

John D. Kennard, Mayor, Lawton

George B. Caruth, Mayor, Shawnee

I. J. Underwood, City Attorney, Tulsa

Evening Session—6:30 O'clock

Banquet at Huckins Hotel ----------

Given by City Officials of Oklahoma City

Address ----------
Hon. Martin E. Trapp, Governor of Oklahoma
How it Feels Not to Be a City Official----------
Mike Donnelly, Oklahoma City

SATURDAY, DECEMBER 15
Morning Session 9:30 O'clock

The Handling of a Municipal Water Department----------
T. J. Embree, Commissioner of Public Works, Okmulgee
Joe Patterson, Commissioner of Public Property, Oklahoma City
Licenses as a Means of Securing City Revenue----------
S. A. Denyer, Drumright
The Oiling of Streets ----------
Dr. Fred Padgett, University of Oklahoma, Norman
How Cities Can Lessen Their Fire Insurance Rates----------
L C. Ingalls, Oklahoma Inspection Bureau
Standard Accounting for Oklahoma Cities----------
W. K. Newton, University of Oklahoma, Norman
Discussion by:
J. L. Garretson, Manager, Yale
P. O. Sill, Manager, Pawhuska
G. E. Matkin, Commissioner of Revenue and Accounts, Stillwater
Question Box ----------

Afternoon Session 2:00 O'clock

Municipal Swimming Pools ----------
John Meisenbacher, Superintendent of Parks, Tulsa
Rules and Regulations of the Corporation Commission as They Affect Cities----------
E. S. Ratcliffe, Attorney for the State Corporation Commission
Municipal Ownership versus Private Ownership of Electric Light Plants in Oklahoma ----------
Z. Z. Rogers, Manager, Duncan
F. T. Wagoner, Manager, Walters
John H. Tomme, Manager, Mangum
John O. Lindsay, Mayor, Norman
J. W. Ordendorff, Mayor, Henryetta
H. F. Newblock, Mayor, Tulsa
S. E. Hickman, Mayor, Altus
Reports of Committees ----------
Election of Officers ----------

UNIVERSITY OF OKLAHOMA BULLETIN

The University Bulletin has been established by the university. The reasons that have led to such a step are: first, to provide a means to set before the people of Oklahoma, from time to time, information about the work of the different departments of the university; and second, to provide a way for the publishing of reports, papers, thesis, and such other matter as the university believes would helpful to the cause of education in our state. The Bulletin will be sent post free to all who apply for it. The university desires especially to exchange with other schools and colleges for similar publications:

Communications should be addressed:

THE UNIVERSITY OF OKLAHOMA

University Hall

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